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PERSPECTIVES ON INTERSTATE AND INTERNATIONAL SHIPMENTS OF MUNICIPAL SOLID WASTE

HEARING

BEFORE THE

SUBCOMMITTEE ON ENVIRONMENT AND HAZARDOUS MATERIALS

OF THE

COMMITTEE ON ENERGY AND COMMERCE

HOUSE OF REPRESENTATIVES

ONE HUNDRED SEVENTH CONGRESS

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CONTENTS

Page

Testimony of:

Berlekamp, Timothy B., Director, Recycling Division of Mahoning County, Ohio 94

Bonior, Hon. David E., a Representative in Congress from the State of Michigan 53

Davis, Hon. Jo Ann, a Representative in Congress from the State of Virginia 54

Harding, Russell J., Director, Department of Environmental Quality, State of Michigan 67

Hess, David E., Secretary, Department of Environmental Protection, State of Pennsylvania 58

Jones, Christopher, Director, Environmental Protection Agency, State of Ohio 62

Kanjorski, Hon. Paul E., a Representative in Congress from the State of Pennsylvania 47

Kaplan, Lori, Commissioner, Department of Environmental Management, State of Indiana 70

Lhota, Joseph J., Deputy Mayor, City of New York 74

Moran, Hon. James P., a Representative in Congress from the State of Virginia 49

Parker, Bruce, President and CEO, National Solid Waste Management Association 86

Rogers, Ervin, Chairman, Board of Supervisors, Gloucester, Virginia 91

Rogers, Hon. Mike, a Representative in Congress from the State of Michigan 42

Woodham, Thomas, Vice Chairman, Lee County, South Carolina 97

Material submitted for the record by:

Fasulo, Joseph E., General Manager,, Allied Waste, letter dated August 9, 2001, enclosing material for the record 105

O'Conner, James E., President and Chief Executive Officer, Republic Services, Inc., letter dated August 14, 2001, enclosing material for the record 114

Skinner, Thomas V., Director, Illinois Environmental Protection Agency, letter dated July 31, 2001, enclosing a statement for the record 117

PERSPECTIVES ON INTERSTATE AND INTERNATIONAL SHIPMENTS OF MUNICIPAL SOLID WASTE

WEDNESDAY, AUGUST 1, 2001

HOUSE OF REPRESENTATIVES,
COMMITTEE ON ENERGY AND COMMERCE,
SUBCOMMITTEE ON ENVIRONMENT AND
HAZARDOUS MATERIALS,
Washington, DC.

The subcommittee met, pursuant to notice, at 10 a.m., in room 2123, Rayburn House Office Building, Hon. Paul E. Gillmor (chairman) presiding.

Members present: Representatives Gillmor, Greenwood, Shimkus, Fossella, Buyer, Bass, Pallone, Towns, McCarthy, Barrett, Luther, Doyle, and Dingell (ex officio).

Staff present: Amit Sachdev, majority counsel; Jerry Couri, policy coordinator; Hollyn Kidd, legislative clerk; and Dick Frandsen, minority counsel.

Mr. GILLMOR. We have had a quorum check in, so we will call the committee to order and proceed. And today our subcommittee will consider the issue of interstate and international shipment and disposal of municipal solid waste. This issue has bedeviled Congress for the last decade as Members of Congress from exporting States have fought to retain the status quo, and States involuntarily receiving waste have sought change.

The alignment of members on this issue in the past has reflected geography rather than ideological split between Republicans and Democrats. If former speaker Tip O'Neill's famous quotation about all politics being local needs any illustration, this issue is it.

Congress first started delving into this issue almost 15 years ago after the Supreme Court struck down restrictions of the interstate shipment of waste in Philadelphia v. New Jersey. The Court found that a ban on out-of-State waste was a regulation of commerce which violated the Commerce Clause of our Federal Constitution. While some of our witnesses here today disagree with that ruling, and similar rulings which have been made by lower courts, I believe it is warranted to explore the movements of solid waste between States and countries and see if congressional action is needed.

Presently, States are important 32 million tons of waste, or well over 14 percent of all waste generated in the United States. The amount of these types of shipments has been growing rapidly. They are 13 percent higher than they were only 2 years ago and more

than twice what was being imported for disposal as recently as 1993. My own State of Ohio has seen an increase of imports over the past decade with the most recent figure showing a 700,000 ton increase in waste imports over the last 2 years alone.

With the trend showing this much waste being carried on taxpayer financed roads from State to State, we need to ensure safe transportation of waste, adequate capacity for local, regional, and national needs and environmental protections that ensure the groundwater and soil are protected from leaching trash.

Before I came to Congress 12 years ago, when I was a member of the Ohio State legislature, I was involved in the passage of what was the most forward-looking waste disposal law at that time. And I personally feel that each town and State needs to develop a comprehensive solid waste management plan and take responsibility for handling the trash that is generated inside its borders.

As a net importer of solid waste, Ohioans have resented being dumped on by entities who not only did not build their own landfills but don't have to live with the consequences. However, I also recognize that we have to be realistic about geography and the demographics of many places that do not have the land mass available to exercise the type of solid waste management that is commensurate to its population. These places should not be shut down if they are making reasonable attempts to responsibly address their disposal needs. In fact, many of these States import as well as export a sizable amount of waste. In addition, I think it is important that towns that want out-of-State waste should not be excluded from getting it.

In some cases, the current law has had the undesirable effect of rewarding the environmentally irresponsible—those who do not make the commitment to handle their waste—and it can also punish the environmentally responsible who do make the commitment to handle their own waste only to see their facilities filled from out-of-State waste. Many people have characterized this debate as NIMBY or "Not in my backyard." I have sometimes called it NIMBY YIMBY, or "Mine in my backyard, yours in your backyard."

But, essentially, the tension here is not over State or international borders; it is whether within the universe of trash disposal market forces lead to the type of choices that will benefit our constituents in the long run. And rarely do we in Congress get to make decisions that are ordinarily reserved for city council and county boards. I believe that today's witnesses will help us survey the issues from the public and private perspectives, as well as identify certain places in legislation that can either be helpful or hurtful in creating a safe, efficient, environmentally responsible, and cost-effective solid waste disposal system in our country. And I want to thank our witnesses for coming.

I would also like to ask unanimous consent that all members have five legislative days to submit opening statements for the record, and I would like to recognize our distinguished ranking member of the committee, Mr. Pallone of New Jersey, for a statement.

Mr. PALLONE. Thank you, Mr. Chairman, for holding this hearing on interstate waste, which is a very important issue for this subcommittee. I understand the chairman's desire to proceed expedi-

tiously with this hearing, but I already mentioned to him, and I did want to mention now, that members should have witnesses' testimony 48 hours in advance of the hearing so that we can adequately prepare. And I know the chairman, himself, only received the testimony last night, but in the future I hope that we can do better.

Since I came to Congress in the 1980's, Congress has considered, but not enacted, numerous bills that would allow States to impose restrictions on interstate waste shipments, a step the Constitution prohibits in the absence of congressional authorization. Over this period, there has been a continuing interest in knowing how much waste is being shipped across State lines for disposal and what States might be affected by proposed legislation. Hopefully, in today's hearing, we will be able to shed some light on these questions.

The difficulty in this debate, however, comes from a lack of information. Not all States require reporting of waste imports, and very few track exports, so the available data are incomplete and in some cases represent estimates rather than actual measurements. We do, however, know that the total interstate waste shipments continue to rise due to the closure of older local landfills and the increasing consolidation of the waste management industry. In the last 5 years alone, reported imports have more than doubled, from 14.5 million tons in 1993 to 32 million tons in the year 2000.

Everyone creates trash, and we need an efficient, equitable, environmentally sound way to expose of it—I should say to dispose of it. Whether you are in the Northeast, the Midwest, the Southeast or the Pacific Coast region, waste shipments inevitably have become an issue. My home State of New Jersey has not been absent from the debate. As a matter of fact, it was a case against our State, the city of Philadelphia v. New Jersey, that prompted the legal rulings which clarified Congress' need to act in the area of interstate waste.

For the third year in a row, New Jersey is on the list of major importers with 836,154 tons of municipal solid waste imports in 1999. New Jersey is still a major exporter of waste as well. Estimates show that MSW exports totaled more than 4 million tons in 2000. But the absence of flow control has led waste-to-energy facilities in New Jersey to search for ways to replace local waste now being disposed elsewhere, and as a result, large amounts of waste are entering New Jersey from New York.

As previously stated, the movement of waste also represents the growing regionalization and consolidation of the waste industry. In 1999, the 3 largest firms, Waste Management, Allied Waste, and Republic Services, accounted for 81 percent of total revenues of the industry's 100 largest firms. These large firms offer integrated waste services, from collection to transfer station to disposal site, in many locations. Often they ship waste to their own disposal facility across a border rather than dispose of it in an in-State facility owned by a rival. As small landfills continue to close, the number of U.S. landfills have declined 51 percent between 1993 and 1999, and this trend toward regionalization and consolidation is likely to continue. The amount of waste being shipped across State lines for disposal may rise in the process.

Again, it is for these reasons, Mr. Chairman, I believe it is important that Congress pursue a legislative solution. I know that our colleagues on the panel are here because they have various bills in that regard. And when we return in September, obviously, I think we need to move on some of this legislation. I look forward to hearing from the witnesses. And thank you, Mr. Chairman.

Mr. GILLMOR. The Chair recognizes the gentleman from Indiana for an opening statement.

Mr. BUYER. Thank you, Mr. Chairman, and I thank my colleagues for coming to testify. I hold here in my hand a bumper sticker. It says, "Indiana, the Landfill State." It is really the sentiments as Michigan receiving Canada trash or Ohio receiving New Jersey trash, Pennsylvania, Virginia. Everybody wants to send their trash somewhere else except, I guess, in their backyard, as the chairman had said.

Small towns in my home State and like yours have been overtaken by thousands of tractor trailers loaded with out-of-State municipal waste. In 1996, at its peak, the State of Indiana received in excess of 1.8 million tons of trash from other States. My district—actually, it was within 4 miles of my childhood home, across the Tippecanoe River, Liberty Township, there is a mountain in the middle of the plains of Indiana, and it is packed with Chicago trash. Now, I don't mind Chicago coming and bringing their commerce and coming to our lakes, but you know what? Don't leave your trash; take it back with you. Especially, I don't mind if you come and camp, then we will take care of your trash. But don't send all your trash from Chicago to Indiana.

While the situation has improved somewhat in terms of volume, the idea that my State or any State should be the dumping grounds of another State's trash is, I find, objectionable. The State of Indiana has acted responsibly to manage trash generated within our State. We created solid waste districts, and we are trying to manage and be responsible in how we handle the solid waste. It makes it very difficult when, in Indiana, we try to act responsibly but other States that have not taken the initiatives just dump it upon us. I find that also objectionable.

The Supreme Court has ruled that trash is a commodity subject to the Commerce Clause and because it can be shipped across State lines unimpeded by the interest of the receiving State to provide for the safekeeping of its own environment. This view is very frustrating for the importing States. No one here would take their trash and dump it in their neighbor's yard, but this is exactly what is happening to Indiana, Michigan, Ohio, Pennsylvania, and others.

Imported trash creates environmental problems, safety problems, community developmental difficulties. States should have some ability to address these needs without running afoul of the Commerce Clause which is why I have co-sponsored Mr. Greenwood's bill. This bill would give the State of Indiana and other States the tools it needs to ensure that its environment is not just spoiled by the actions of other States that are not acting responsibly. The idea to give importing States some tools to address these issues is not a new one. In fact, in the 103d Congress, the Congress passed such legislation by an overwhelming vote of 368 to 55. I also recall how painful it was in 1996. Senator Dan Coates was the leader of this

issue in the Senate. It passed the House, it went to the Commerce Committee, and I recall standing in the basement of the Capitol before the Commerce Committee in 1996 when it was my own congressman, John Meyers of Indiana, in the Energy and Water Appropriations Subcommittee, that killed the legislation, and I have never forgotten that.

Finally, Mr. Chairman, I am very pleased that you granted my request and invited the commissioner of the Indiana Department of Environmental Management to present testimony here today. Ms. Lori Kaplan and I have discussed the issue in the past, and I know the subcommittee will greatly appreciate the views she presents on behalf of Indiana. And I welcome my colleague's testimony and yield back my time.

Mr. GILLMOR. The gentleman yields back. We have been joined by the distinguished ranking member of the full committee, the gentleman from Michigan, who is recognized for an openings statement.

Mr. DINGELL. Mr. Chairman, thank you. And I appreciate this hearing and commend you for conducting it. I also welcome our panel and others who will be here to testify on this very important question. I want to welcome this legislative hearing, and I want to express my pleasure that it will focus this subcommittee and this committee's attention on three pieces of legislation designed to provide our communities and States relief from unwanted imports of municipal solid waste.

In 1994, this committee and the House of Representatives, on a broadly bipartisan basis, passed interstate waste legislation which was the predecessor to H.R. 1213. The broad support for such legislation was demonstrated by a vote in favor of 368 to 55. The inability of our localities and States to protect themselves from unwanted waste has become clear after the Supreme Court's 1992 decision in the case of Fort Gratiot Sanitary Landfill v. Michigan Department of Natural Resources—a matter of irritation for both myself and Mr. Bonior.

Since then, for almost a decade, State after State in all areas of this country have searched for a constitutional means to control shipments of solid waste from other States and countries. The result of this effort has been costly and unproductive litigation. State laws have been repeatedly struck down by the courts, because under the Commerce Clause of the Constitution, only Congress has the authority to grant States and local jurisdictions the right to regulate waste imports into those jurisdictions. The recent opinion of the Fourth Circuit Court of Appeals striking down Virginia's law is but the latest example.

Action by this committee and this Congress is long overdue. While this committee has failed to act for the past 6 years, the problem has worsened in Michigan and in almost every other State. In the 1-year period from 1999 to 2000, total imports into Michigan increased by 1 million tons of unwanted waste. Out-of-State imports now represent almost 20 percent of all trash disposed of in Michigan. Slightly less than one-half of the imports come from Canada. And I might note that there is very little control over what is in that waste and whether it is ordinary waste or whether it con-

stitutes hazardous waste or just what. Nationwide, waste imports have more than doubled since 1993.

There has been a dramatic consolidation within the waste management industry. According to Congressional Research Services, the three top firms account for 80 percent of the revenues. In addition to filling precious landfill capacity, the thousands upon thousands of truckloads of out-of-State and Canadian waste add to the already congested highways in Michigan and other States, spur concerns over traffic safety, create wear and tear on the roads, pollute our air, threaten our environment, and outrage our citizens.

Our citizens and communities demand control over imported garbage. For the past 6 years bipartisan supporters of H.R. 1213, including Governors and local officials from many States, have been seeking action by this Congress and by this committee. I would ask unanimous consent at this point that their correspondence be included in the hearing record at this point.

Mr. GILLMOR. Without objection.

[The information referred to follows:]

July 31, 2001

The Honorable Paul E. Gillmor
Chairman
U.S. House of Representatives
Energy and Commerce Subcommittee on
Environment and Hazardous Materials
2125 Rayburn House Office Building
Washington, D.C. 20515

Dear Chairman Gillmor:

We are writing to express our appreciation for holding a hearing on the issue of managing municipal solid waste and our strong support for H.R. 1213, the Solid Waste Interstate Transportation Act of 2001, introduced by Representative Jim Greenwood (R-PA). This bill would provide state and local governments with the tools they need to reasonably limit the amount of out-of-state waste that crosses their borders, maintain disposal capacity for their own waste and help protect their natural resources.

Lacking a specific delegation of authority from Congress to regulate waste imports in their jurisdictions, states are subject to an endless flood of out-of-state trash. It is critical for Congress to take action to enable states the ability to implement environmentally sound waste disposal plans and recycling programs in order to ensure adequate in-state capacity for their solid waste. The unrestricted stream of garbage imported into states contradicts recycling program goals--which is to conserve landfill space--when landfill capacity is being filled up with out-of-state trash.

As you know, New York City closed its only landfill at Fresh Kills, which significantly increases the amount of waste that will be exported into other states. This landfill handled more than 3.5 million tons of garbage annually, which is now being exported throughout the Mid-Atlantic and Midwestern regions of the country.

We have worked together for several years to resolve this ever-increasing problem of unregulated interstate import of waste, and many states view this as a significant issue. We appreciate your co-sponsorship of similar legislation in past Congresses and look to you now for your leadership to address this important issue. We would be pleased to work with you to secure passage of interstate waste control legislation.

Thank you for your personal consideration of our concerns.

Sincerely,

John Cyl
Frank O'Bannon
Bob Taft
Tom Ridge

June 23, 1995

'95 JUN 23 AM 11:37

The Honorable Thomas J. Bliley, Chairman
The House Commerce Committee

The Honorable John D. Dingell, Ranking Minority Member
The House Commerce Committee

The Honorable Michael G. Oxley, Chairman
Subcommittee on Commerce, Trade and Hazardous Materials

The Honorable W.J. Tauzin, Ranking Minority Member
Subcommittee on Commerce, Trade and Hazardous Materials

Dear Gentlemen:

We are writing to express our strong support for the interstate waste provisions in the State and Local Government Interstate Waste Control Act of 1995, offered by Congressman Mike Oxley, Chairman of the Subcommittee on Commerce, Trade and Hazardous Materials. We respectfully urge you to help secure its enactment without any weakening amendments.

For too long, states have had only limited ability to place restrictions on shipments of unwanted garbage from other states into their landfills and incinerators. Although mandated by federal law to develop comprehensive waste management plans, states' efforts to enforce their planning rules have been overturned repeatedly by the federal courts. Lacking a specific delegation of authority from Congress, states that have acted responsibly to implement environmentally sound waste disposal plans and recycling programs are still being subjected to a flood of out-of-state trash.

The subcommittee-passed bill would remedy this situation by amending the Solid Waste Disposal Act to grant state and local governments authority to limit out-of-state waste shipments. For instance, landfills and incinerators that did not receive out-of-state waste in 1993 could not receive trash from other states until local governments approved its receipt. In addition, states could freeze their out-of-state waste at 1993 levels and some states would be able to reduce these levels significantly.

Under the subcommittee measure, states would have the option to deny a permit to new facilities if it is determined that there is not a local or in-state regional need for that facility. And, states could place restrictions on construction and demolition debris -- from road and building projects -- that comes from other states, Canada and Mexico.

We are not asking for outright authority to prohibit all out-of-state waste. We are asking for reasonable tools that will enable state and local governments to act responsibly to manage their own waste and limit waste from other states. We need assurances that we can save our disposal space for our own use.

We strongly believe that Chairman Oxley's bill addresses many of our concerns, merits the support of the Commerce Committee and should be passed without any weakening amendments. Provisions that would allow states to significantly reduce or ratchet their waste, allow states to freeze out-of-state waste levels, allow states to deny a permit for disposal facilities based on need, allow states to restrict construction and demolition debris and allow out-of-state waste to be banned at facilities until local governments approve its receipt shouldn't be deleted from this bill.

In addition, definitions in the bill should not be weakened. The definitions of municipal solid waste, affected local government and host community agreements, among others, were laboriously negotiated last year by importing and exporting states, the National Association of Counties and the waste industry. While they are not as strong as all parties would like, we believe they represent a fair compromise.

We encourage the Commerce Committee to pass amendments that would allow states to impose a cost recovery surcharge fee on out-of-state waste and impose a percentage cap on the amount of waste that a new facility or major modification of an existing facility could receive. Cost recovery surcharges would provide some states with the funding necessary to implement solid waste management programs. Permit caps would provide assurance to states that excessive amounts of trash imports will not occur in the future and that new landfills and incinerators are not being built primarily for the purpose of receiving outside waste.

This legislation is of great importance to our states and we respectfully request that it be approved without any weakening amendments. Thank you for your personal consideration of our concerns.

Sincerely,

George V. Voinovich
Governor of Ohio

Evan Bayh
Governor of Indiana

Tom Ridge
Governor of Pennsylvania

John Engler
Governor of Michigan

Brereton Jones
Governor of Kentucky

Mike Leavitt
Governor of Utah

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Frank Keating
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Edward T. Schafer
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Don Sundquist
Governor of Tennessee

John A. Kitzhaber
Governor of Oregon

Zell Miller
Governor of Georgia

Mike Lowry
Governor of Washington

E. Benjamin Nelson
Governor of Nebraska

Congress of the United States
House of Representatives
Washington, DC 20515

July 12, 1996

The Honorable Newt Gingrich
Speaker
U.S. House of Representatives
H-232 Capitol
Washington, DC 20515

The Honorable Richard Gephardt
Minority Leader
U.S. House of Representatives
H-204 Capitol
Washington, DC 20515

Gentlemen:

We, the undersigned Members of the Pennsylvania Congressional Delegation, are writing regarding an issue that is of great importance to our state -- passage of interstate waste legislation during this Congress. As you may know, Pennsylvania is the largest importer of out-of-state municipal waste. Last year we received over 5.2 million tons of trash from other states. This represents a 94 percent increase in the amount of waste our state received only six years ago.

The recent announcement by Governor Pataki and Mayor Giuliani setting a closure date for the Fresh Kills Landfill in Staten Island and New York City's proposal to export more municipal waste to states like Pennsylvania while cutting its recycling budget by $28 million makes passage of legislation all the more urgent for us. Pennsylvania already receives more than 2.7 million tons of waste from New York each year -- 15 percent of all the municipal waste New York produces. The closure of Fresh Kills landfill means that New York will need to locate new disposal capacity for nearly 5 million tons of additional solid waste annually.

It is critical that Congress grant importing states like Pennsylvania the authority to place reasonable limits on interstate waste shipments. The citizens of Pennsylvania have successfully undertaken the difficult challenge of providing disposal capacity for handling our own waste. The state has acted responsibly to solve its own waste problems by taking the following steps:

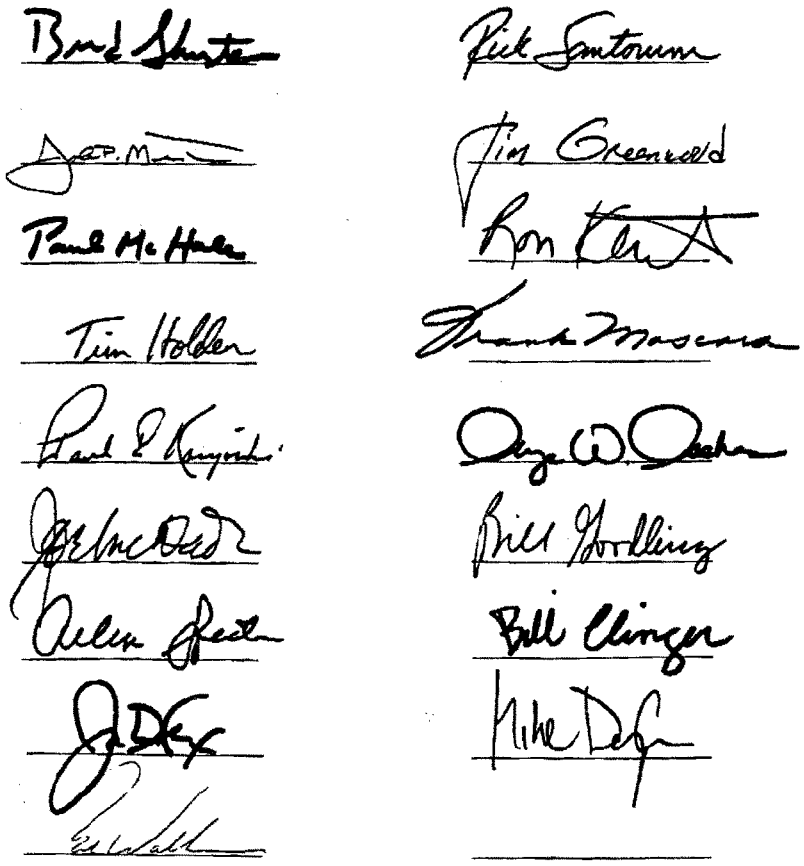
- Adopted the toughest environmental standards in the nation for waste disposal facilities. All of the municipal waste landfills now operating in Pennsylvania have double liners, leachate treatment and gas management programs.
- Implemented the largest community-based recycling program in the United State involving 772 municipalities.
- Required all counties to adopt municipal waste plans to provide for disposal capacity for the next ten years.

Unfortunately, Pennsylvania's waste disposal capacity is rapidly being filled by other states' trash. We need to pass federal legislation to give states like Pennsylvania the authority to freeze and then reduce imports of unwanted municipal waste from other states.

The Senate passed its version of interstate waste/flow control legislation on May 16, 1995. It is critical that the House move quickly so that the legislation can be conferenced and signed into law before the end of this Congress.

Thank you for your attention to this issue.

Sincerely,



Congress of the United States
Washington, DC 20515

July 25, 1996

The Honorable Newt Gingrich
Speaker
The United States House of Representatives
Washington, DC 20515

Dear Mr. Speaker:

As members of the Michigan Congressional delegation, we are writing to express the need for timely action on interstate solid waste legislation. We request your personal assistance in reaching a final resolution of this matter.

Over the past decade, Michigan has taken important steps to plan for the future management of solid waste generated within our state. Michigan has adopted a comprehensive strategy which encourages composting, waste reduction, and recycling, and also includes a successful bottle return and mandatory deposit law. Our communities have made difficult decisions and have permitted new disposal facilities and the expansion of existing facilities in order to increase capacity when it was found to be the only recourse to meet their future disposal needs. By implementing an integrated waste management planning process, our state has taken a responsible approach to addressing solid waste generated in our state in an environmentally sound and effective manner.

However, recent U.S. Supreme Court decisions have impacted our efforts. The 1992 U.S. Supreme Court decision, *Fort Gratiot Sanitary Landfill v. Michigan Department of Natural Resources*, severely impacted our state's ability to effectively plan and manage the solid waste generated in our state. By completely prohibiting our ability to regulate waste entering our borders, this decision opened Michigan to a flood of waste from other regions outside our state that viewed newly created capacity as a quick, easy, and relatively inexpensive solution to their own waste disposal problems.

Now our state faces significant pressures from increasing waste imports entering from other states, and Canadian interests have also found our state to be an attractive alternative for their waste disposal needs. In addition to the out-of-state waste Michigan now receives, which has been estimated as high as 1.5 million tons per year, recent news stories have reported negotiations are underway in southeast Michigan which could result in the region being the new dumping grounds for an additional 750,000 tons of trash each year from the metropolitan Toronto area.

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Although legislation to address our concerns passed the House of Representatives by a large bipartisan margin during the 103rd Congress, a final resolution has remained elusive. Along with our colleagues from other large importing states such as Ohio, Pennsylvania, and Indiana, we have been committed to seeing interstate waste legislation passed by this Congress which would provide our states with the reasonable tools we need to control the growing flow of interstate waste.

Last year, the Senate passed a combined interstate waste and flow control bill. The House Commerce Subcommittee on Commerce, Trade, and Hazardous Materials approved interstate waste and flow legislation in May of last year, but this bill has yet to receive further consideration. The defeat of a stand alone flow control proposal in January of this year on the House floor may well have concluded with a different result, if not for the unsuccessful effort to separate the issues of flow control and interstate waste. We believe that the House would pass a comprehensive proposal with interstate and flow control provisions, if given the opportunity.

We were encouraged when the states of New Jersey and New York, large exporting states, recently joined with Michigan and other Midwestern states to seek consensus on a legislative solution. However, we were bitterly disappointed to learn that the State of New York suspended their participation in these discussions in the wake of their decision to close one of New York City's largest disposal facilities. Unlike New York constituents, who hailed the closure of this facility--one of the largest in North America, we find little comfort in the fact that our state now faces the possibility of receiving even greater amounts of out-of-state waste.

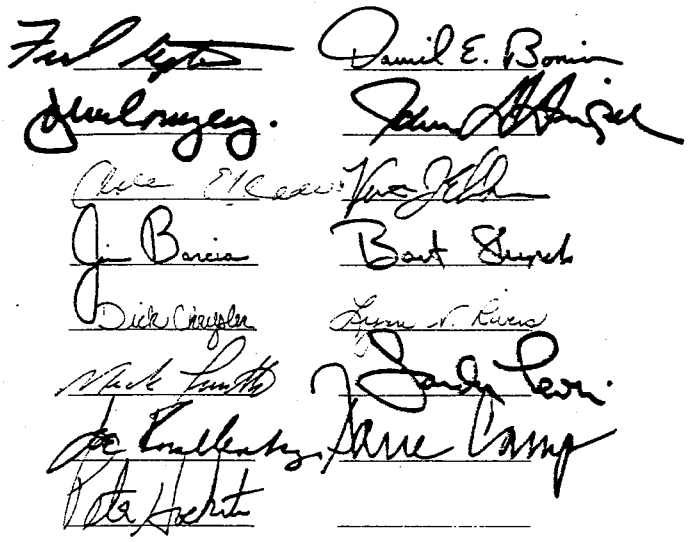
As you are aware, time is running short and we strongly believe this issue must be addressed before the end of the current session. We are not asking for the ability to completely ban waste from entering our state, nor are we requesting that states like New York drastically reduce their waste exports overnight. We are seeking a fair and reasonable approach which reduces the environmental risk to our localities, restores their ability to effectively plan and implement integrated management strategies, gives them greater authority to make decisions about waste entering facilities located in their communities, and provides exporting localities an incentive to take similar steps.

We will support legislation which would be sensitive to market forces and would gradually reduce levels of out-of-state waste entering Michigan over reasonable time frames. Provisions of an acceptable proposal should also include placing the large amounts of out-of-state construction and demolition debris which significantly impact our disposal capacity under the scope of regulation. Legislation should allow permit decision-making to take into account local and regional disposal needs consistent with existing state law. A proposal including these elements would go a long way toward restoring integrity in our state's planning process in which our taxpayers have committed a substantial investment of their efforts and resources.

Again, Mr. Speaker, we respectfully request you to assist us in resolving this vital issue before the end of the current session, and we remain committed to working with you and our fellow House colleagues to reach an acceptable conclusion.

Thank you for your consideration of our request.

Sincerely,



July 9, 1997

The Honorable Thomas J. Bliley, Jr.
Chairman
The House Commerce Committee
2125 Rayburn House Office Building
Washington, D.C. 20515

Dear Chairman Bliley:

We are writing to urge you to move a comprehensive interstate waste and flow control bill this year. In recent conversations with Governor Voinovich, you encouraged our five states to reach an agreement on interstate waste provisions in order to move comprehensive legislation that will help both importing and exporting states.

We strongly believe that the lack of federal interstate waste and flow control legislation undermines states' abilities to implement environmentally sound waste disposal plans and to protect our own natural resources. Without federal authority to place reasonable limits on the amount of out-of-state waste, states like Ohio, Pennsylvania, Indiana and Michigan have become dumping grounds for trash from other states. Without flow control, states like New Jersey are limited in their ability to manage effectively the disposal of municipal solid waste within their own borders, and would face an enormous financial liability.

In Pennsylvania, Indiana, Michigan and Ohio, where out-of-state waste imports are continuously and unreasonably high, citizens repeatedly ask why they should recycle in order to conserve disposal space for other states' waste. New Jersey has taken aggressive steps to try to manage all of its trash within its borders by the year 2000. New Jersey communities have acted responsibly to build disposal facilities to help meet that goal. However, if Congress fails to protect existing flow control authorities, repayment of the outstanding $1.6 billion investment will be jeopardized.

We are deeply concerned that our efforts to make responsible decisions have been undermined by federal courts, have put potentially large financial burdens on our communities and have encouraged exporting states to pass their trash problems onto the backs of others. Our citizens are making sacrifices and they need assurances that we have the tools necessary to manage our own waste and limit imports from other states so that we have the space to handle our own garbage.

You have asked our five states to try to work through regional differences on interstate waste provisions that would allow an interstate waste and flow control bill to move forward. Last year, importing states and New Jersey were able to quickly reach a consensus on interstate waste provisions, provided that New Jersey receives flow control authority. We respectfully resubmit that agreement and urge prompt consideration by your committee and the House.

We support this package as a fair and reasonable compromise between importing and exporting states. It provides the ability for importing states to reduce the current amount of out-of-state waste and limit future interstate waste flows. States also would be able to place reasonable restrictions on construction and demolition debris. In addition, it gives local communities the ability to decide whether or not they want to accept other states' trash. And, communities would have reasonable ability to implement flow control authorities. While this package does not include everything that we would like, we believe it is a fair package that we can support without amendments.

Unfortunately, efforts to place reasonable restrictions on out-of-state waste shipments have been perceived by some as an attempt to ban all out-of-state trash. On the contrary, importing states -- like Michigan, Indiana, Ohio and Pennsylvania -- are not asking for outright authority to prohibit all out-of-state waste, nor are we seeking to prohibit waste from any one state. We are asking for reasonable tools that will enable state and local governments to act responsibly to manage their own waste and limit unreasonable waste imports from other states. Such measures would give substantial authority to limit imports and plan facilities around our own states' needs.

Effective legislation is supported throughout the country. Twenty-four governors and the Western Governors' Association previously have written to you and the House leadership urging passage of effective legislation.

Thank you for your personal consideration of our agreement. We urge you to move forward with comprehensive interstate waste and flow control legislation this year.

Sincerely,

George V. Voinovich
Governor of Ohio

John Engler
Governor of Michigan

Tom Ridge
Governor of Pennsylvania

Christine Todd Whitman
Governor of New Jersey

Frank O'Bannon
Governor of Indiana

February 5, 1999

The Honorable Rudolph W. Giuliani
The City of New York
Office of the Mayor
City Hall
New York, NY 10007

Dear Mayor Giuliani:

We were very disappointed with the plan you announced in December to increase the export of New York City's municipal waste to nearby states, rather than taking direct responsibility for your own waste. Your plan continues a policy that relies exclusively on out-of-state locations for the transfer, processing, or disposal of New York City's trash and garbage. It is not only unfortunate, but an unacceptable policy in our view.

The interstate transportation of waste into or through our States has significantly contributed to a direct increase in safety and environmental hazards to our citizens and the traveling public. While we will continue an aggressive compliance inspection for all methods of waste transportation, increases in long-haul waste transporting will continue to affect the quality of life of our citizens and the environment.

Last year your administration made a commitment to only dispose of New York City waste at facilities which have host community agreements to accept such waste. We expect the City to live up to this commitment and will monitor waste shipments carefully to see that it does.

In closing, we urge you to reevaluate your plan and to follow through on the City's commitment not to send waste to sites in communities who do not agree to accept it.

We stand ready to meet with the City to discuss changes to your plan that would

bring balance to the waste marketplace.

Sincerely,

James M. Seif
Secretary
Pennsylvania Department of Environmental Protection

Pennsylvania Department of Environmental Protection
P.O. Box 2063
Harrisburg, PA 17105-2063
717-787-2814

Jane Nishida
Secretary
Maryland Department of the Environment

Maryland Department of the Environment
2500 Broening Highway
Baltimore, MD 21224
410-631-3084

Robert C. Shinn, Jr.
Commissioner
New Jersey Department of Environmental Protection

New Jersey Department of Environmental Protection
7th Floor
P.O. Box 402
Trenton, NJ 08625

John Paul Woodley, Jr.
Secretary
Virginia Department of Natural Resources

Virginia Department of Natural Resources
P.O. Box 1475
Richmond, VA 23218
804-786-0044

Michael P. Miano
Director
West Virginia Division
of Environmental Protection

West Virginia Division
of Environmental Protection
#10 McJunkin Road
Nitro, WV 25143
304-759-0515

cc: John P. Cahill, Commissioner, New York
Department of Environmental Conservation



WESTERN
GOVERNORS'
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Chairman

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Washington, D.C. 20001

(202) 624-5402
Fax (202) 624-7707

www.westgov.org

April 23, 1999

The Honorable James C. Greenwood
2436 Rayburn H.O.B
Washington, D.C. 20515

Dear Representative Greenwood:

On behalf of the Western Governors' Association (WGA), we would like to commend you for introducing H.R. 1190, "The Solid Waste Interstate Transportation and Local Authority Act of 1999." This bill would authorize much needed tools to states to manage the disposal of out-of-state municipal solid waste. We strongly support the 'Interstate Transportation and Disposal of Municipal Solid Waste' section of the bill, and urge its passage during this Congress. WGA does not have a position on 'flow control,' and therefore does not advocate any position on that section of the bill.

Western governors believe each state should do everything it possibly can to manage the wastes generated within its borders. We do not support an outright ban on waste shipments between states because there are many examples of safe, effective and efficient cross-border waste management arrangements.

We believe the provisions in Section 2 of your bill would provide states reasonable controls over both current, and future, waste streams. The governors particularly appreciate the provisions in your bill concerning "(g) Limitations on Prospective Waste Flows" and "(i) Cost Recovery Surcharge." Authority for cost recovery surcharges is needed to help states offset their costs for overseeing the disposal of out-of-state wastes. Percentage limitations are necessary for states to plan for and protect future in-state disposal capacity by ensuring that a portion of landfills and incinerators will be available for in-state use. To that end, we would seek an amendment that addresses significant increases of out-of-state waste going to existing sites under host community agreements.

Again, we commend you for introducing H.R. 1190, and urge its passage this Congress.

Sincerely,

Michael O. Leavitt
Governor of Utah
WGA Lead Governor

John A. Kitzhaber, M.D.
Governor of Oregon
WGA Lead Governor

cc: House Committee on Commerce

Congress of the United States

Washington, DC 20515

June 29, 1999

The Honorable Michael G. Oxley
Chairman
House Commerce Subcommittee on Finance and Hazardous Materials
2233 Rayburn
Washington, D.C. 20515

Dear Chairman Oxley:

As bipartisan sponsors of H.R. 1190, "The Solid Waste Interstate Transportation and Local Authority Act of 1999, we are writing to respectfully request that you schedule a hearing on this bill in the near future. The increasing amounts of interstate waste shipments is a national problem. According to the Congressional Research Service, the amount of trash transported across state lines increased by 32% in just two years - 25 million tons in 1997 - a 6 million ton increase from 1995. A related problem is the closing of the Fresh Kills landfill in Staten Island, New York in 2001, which will prompt the shipment of 13,000 additional tons of trash each day into other states.

States across the nation have searched for constitutional means to restrict shipments of waste from other states. As you know, the Supreme Court has ruled that, under the Commerce Clause of the Constitution, states are powerless to regulate where their trash goes or to stop trash from being brought in to their jurisdiction. Only Congress has the ability to grant states this authority.

As you are well aware, we are not seeking to give the states outright authority to prohibit all out-of-state trash, but rather provide reasonable tools enabling state and local governments to responsibly maintain disposal capacity for their own waste.

The states are confronted with a collateral impact from trash shipments on our highways. Trucks are overweight, unsafe and prone to accidents. Unauthorized biomedical and other hazardous waste has been found in spot checks of out-of-state garbage. Improper disposal of unauthorzied waste has a negative impact on our air quality, property values and drinking water sources.

The problem of increasing interstate waste shipments is not going away, but is getting worse. We believe it is time for Congress to act. Again, we respectfully request that a hearing be promptly scheduled in the House so we can hear from the affected states, our constituents, elected officials and other interested parties.

Sincerely,

James C. Greenwood

Ron Klink

James Traficant

Curt Weldon

Jerry Costello

Ed Pastor

Bruce Vento

James Barcia

Gene Green

Norman Sisisky

Marcy Kaptur

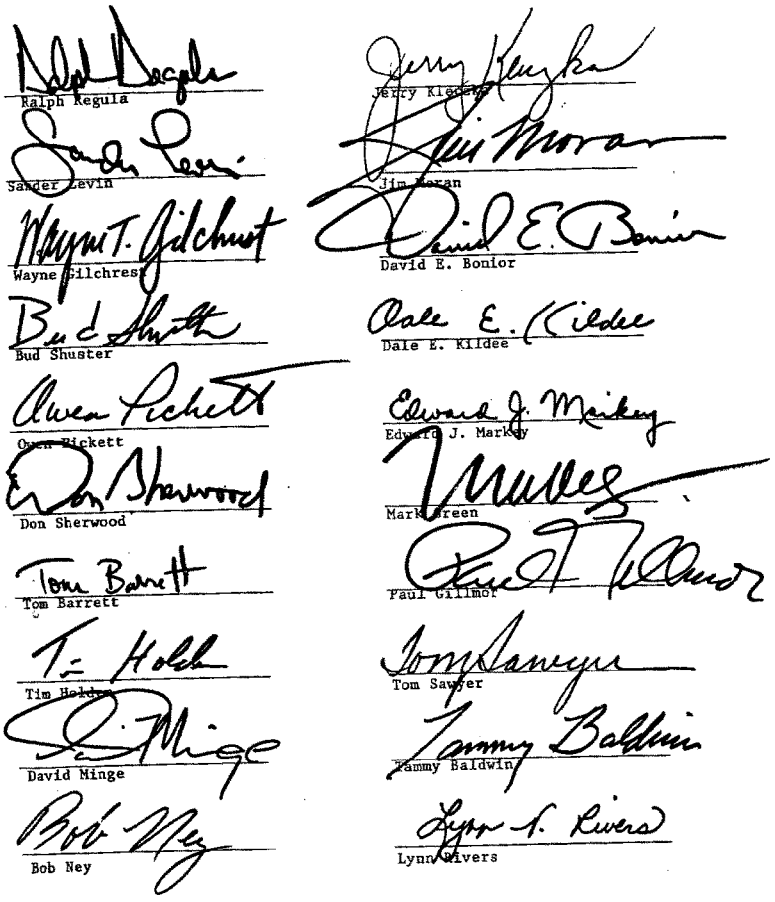
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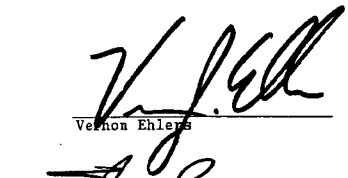
Paul Kanjorski

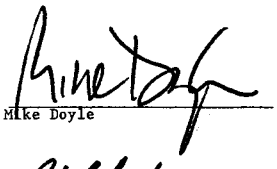
Bart Stupak

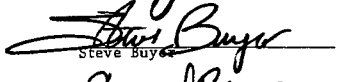
Fred Upton

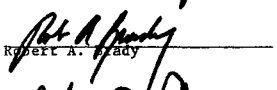
David Obey


Ralph Regula
Jerry Kleczka
Sander Levin
Jim Moran
Wayne Gilchrest
David E. Bonior
Bud Shuster
Dale E. Kildee
Owen Pickett
Edward J. Markey
Don Sherwood
Mark Green
Tom Barrett
Paul Gillmor
Tim Holden
Tom Sawyer
David Minge
Tammy Baldwin
Bob Ney
Lynn Rivers

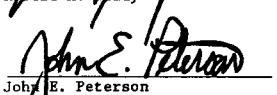

Vernon Ehlers


Mike Doyle


Steve Buyer

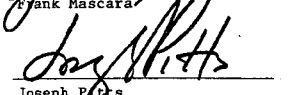

Robert A. Brady

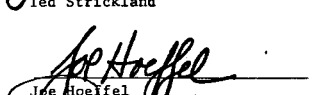

Sherrod Brown

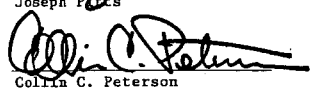

John E. Peterson

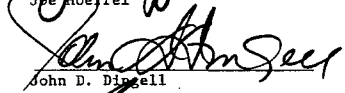

Frank Mascara


Ted Strickland

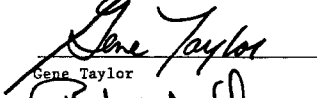

Joseph Pitts


Joe Hoeffel

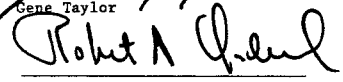

Collin C. Peterson


John D. Dingell

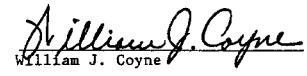

Peter J. Visclosky


Gene Taylor


Bobby L. Rush


Robert A. Underwood


Carolyn C. Kilpatrick


William J. Coyne

State of Indiana Commonwealth of Pennsylvania State of Ohio
State of Michigan State of New Jersey

July 2, 1999

The Honorable Mike Oxley
Chairman, Subcommittee on Finance and Hazardous Materials
House Commerce Committee
2125 Rayburn House Office Building
Washington, D.C. 20515

Dear Chairman Oxley:

We are writing to express our support for H.R. 1190, the Solid Waste Interstate Transportation and Local Authority Act of 1999, introduced by Reps. Greenwood (R-PA) and Klink (D-PA) and urge you to hold hearings on this important legislation as soon as possible. As you may know, the Senate Committee on Environment and Public Works recently conducted a hearing on the issues of interstate waste shipments and flow control.

As you know, the U.S. Supreme Court has ruled in numerous decisions dating back to 1978 that the transport and disposal of municipal waste is interstate commerce protected by the Constitution. Therefore states do not have the authority to limit the flow of waste across state lines without Congressional action. Our state leaders have pursued federal legislation for several years, while waste imports have increased at staggering rates during that same period. Last year, the Congressional Research Service reported that its most recent data showed interstate waste shipments increasing to a total of over 25 million tons. With the closing of the Fresh Kills landfill in New York City, this figure will increase by close to 5 million tons a year, as the City has announced it will rely on exporting its waste to other states in order to solve its disposal problem.

H.R. 1190 grants state and local governments federal authority to establish reasonable limitations on the flow of interstate waste and protect public investment in waste disposal facilities needed to address in-state disposal needs. The bill provides authority for state and local governments to formally approve the receipt of out-of-state municipal solid waste prior to disposal in landfills and incinerators, with a number of important exemptions designed to ensure that environmentally sound disposal of the nation's waste will not be disrupted.

H.R. 1190 also includes authority for states to freeze waste shipments statewide at 1993 levels and allow states to implement laws requiring an assessment of regional and local needs before issuing facility permits or implementing statewide percentage caps on out-of-state waste at new or expanded facilities. Under a separate set of provisions, states and local governments would, as a matter of equity, also be authorized to exercise limited flow control authority necessary to protect existing public investments.

We recognize that the Solid Waste Interstate Transportation and Local Authority Act of 1999 would not establish an outright ban on out-of-state waste shipments; instead, it would give states and localities the tools they need to better manage their in-state waste disposal needs and protect important natural resources.

We are confident that H.R. 1190 will continue to gain strong, bipartisan support and look forward to working with you to secure passage of effective interstate waste/flow control legislation.

Sincerely,

Frank O'Bannon
Governor, State of Indiana

Bob Taft
Governor, State of Ohio

John Engler
Governor, State of Michigan

Christine T. Whitman
Governor, State of New Jersey

Tom Ridge
Governor, Commonwealth of Pennsylvania

Congress of the United States

Washington, DC 20515

March 22, 2000

The Honorable Jim Gilmore, Governor
Commonwealth of Virginia
State Capitol, Third Floor
Richmond, VA 23219

Dear Governor Gilmore:

We are writing to ask respectfully for your support of our effort to enact interstate waste legislation this year. We were dismayed by the February 3 decision of U.S. District Judge James Spencer to strike down Virginia's 1999 statutes to ban waste imports shipped by barge and to cap the amount of waste imported into landfills. This is yet another in a long line of court decisions rendering the states powerless to regulate trash imports, regardless of public support.

We are deeply concerned that the Fresh Kills landfill on Staten Island, New York is scheduled to close next year. Each day, 5,000 tons of trash are dumped in the Fresh Kills landfill, or more than 1.8 million tons of trash a year. When Fresh Kills closes, this trash will be added to more than 6.3 million tons of trash already exported from New York. We have learned that bids are being taken for contracts to export the trash currently dumped in Fresh Kills, and that the New York Department of Sanitation expects to award a contract this summer. This approach leaves little doubt that the policy and strategy of New York is to export its waste to other states rather than developing disposal capacity in-state.

According to the Congressional Research Service, New York exports trash primarily to Pennsylvania and Virginia, with New Jersey, Ohio and Connecticut also receiving large amounts. However, any state is a candidate to receive this additional trash, along with solid waste now exported under contracts that will soon expire.

The lack of control of interstate waste shipments is a serious public policy issue that must be addressed. In just five years, from 1993 - 1998, interstate waste shipments across the nation nearly doubled, from 14.5 million tons to 28.4 million tons. In 1998, Virginia imported 3.9 million tons of municipal solid waste, an increase of more than one million tons from the previous year.

In light of these four factors - the history of courts striking down state laws to curb trash imports, the decision by Judge Spencer to strike Virginia's statutes to control waste imports, the Fresh Kills landfill closing, and escalating interstate waste shipments nationwide, do you agree that there is an urgent need for Congress to enact interstate waste legislation?

As you are aware, we have introduced a bipartisan bill, HR 1190, the "Solid Waste Interstate Transportation and Local Authority Act of 1999." It does not give states the outright authority to prohibit all out-of-state trash, but rather provides reasonable tools for states to responsibly manage their own waste. Our bill has been endorsed by the Governors of twenty three states.

We were pleased that HJ Res 385, asking Congress to enact HR 1190, was passed unanimously in the Virginia Legislature, by a vote of 95 - 0 in the House on February 11, 2000

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and by a vote of 38 - 0 in the Senate on February 22, 2000, and that HJ 214, memorializing Congress to pass interstate waste legislation, passed by 38 - 0 in the Senate on February 22, 2000 and by 98 - 0 in the House on February 25, 2000. Last year the *Richmond-Times Dispatch* reported that a Virginia Commonwealth University poll found that 84% of Virginians identifying themselves as Democrats and 85% of Virginians identifying themselves as Republicans favored controls of shipments of trash to Virginia.

Action by Congress is long overdue. For at least a decade, states across the nation have searched for constitutional means to restrict shipments of waste from other states, and costly and unproductive litigation has been the result. State laws are repeatedly struck down by the courts, as we saw in Virginia, because under the Commerce Clause, Article I, Section 8 of the Constitution, only *Congress* has the authority to grant states and local jurisdictions the right to regulate waste imports into their jurisdictions. The following cases clearly illustrate that Virginia is not alone:

Michigan	*Fort Gratiot Sanitary Landfill Inc. v. Michigan Department of Natural Resources*, 112 S. Court 2019 (1992)
South Carolina	*Northeast Sanitary Landfill, Inc. and Container Corp. of Columbia v. South Carolina Department of Health and Environmental Control*, 843 F. Supp 100 (1992)
Wisconsin	*National Solid Wastes Management Association v. George Meyer, Secretary of the Wisconsin Department of Natural Resources*, 165 F.3d 1151 (1999)
Oregon	*Oregon Waste Systems v. Department of Environmental Quality of the State of Oregon*, 511 U.S. 93 (1994)
Indiana	*Government Suppliers Consolidating Services Inc. and Jack Castenova v. Honorable Evan Bayh, Governor of the State of Indiana*, 975 F.2d 1267 (1992)
Georgia	*Southern States Landfill v. Georgia Department of Natural Resources* 801 F. Supp 725 (1992)
South Carolina	*Environmental Technology Council v. Sierra Club and State of South Carolina*, 98 F.3d 774 (1996)

We respectfully ask that you actively support our efforts in the Commerce Committee to receive a hearing and markup of HR 1190 as soon as possible, and send the bill to the House floor for a vote. A similar measure, HR 4779, passed in the House on September 28, 1994 by an overwhelming vote of 368 - 55. Each Member of the Virginia congressional delegation voted for the bill. Regrettably, interstate waste legislation was not enacted before the 103rd Congress adjourned.

Interstate waste shipments have grown by 11.3 million tons since HR 4779 passed in 1994, from 17.1 million tons to 28.4 million tons in 1998, the latest available figures. We

request your support for our effort to move interstate waste legislation through the House this Spring, allowing us an opportunity to send the bill to the Senate for passage, and to the White House for the President's signature, before the 106th Congress adjourns.

We thank you for your consideration, and hope to work with you to enact responsible interstate waste legislation.

Sincerely,

JAMES C. GREENWOOD
Member of Congress

RON KLINK
Member of Congress

JAMES P. MORAN
Member of Congress

OWEN PICKETT
Member of Congress

PAUL E. GILLMOR
Member of Congress

JOHN D. DINGELL
Member of Congress

THOMAS M. BARRETT
Member of Congress

EDWARD J. MARKEY
Member of Congress

SHERROD BROWN
Member of Congress

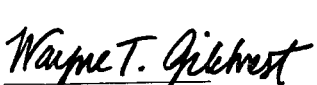
TOM SAWYER
Member of Congress

TED STRICKLAND
Member of Congress

BART STUPAK
Member of Congress

DAVID E. BONIOR
Member of Congress

STEVE BUYER
Member of Congress



WAYNE T. GILCHREST
Member of Congress



SANDER M. LEVIN
Member of Congress



PAUL KANJORSKI
Member of Congress



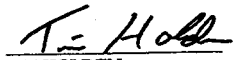
RODNEY P. FRELINGHUYSEN
Member of Congress



DALE E. KILDEE
Member of Congress



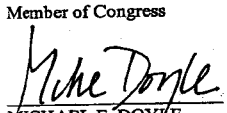
PETER J. VISCLOSKY
Member of Congress



TIM HOLDEN
Member of Congress



JOHN E. PETERSON
Member of Congress



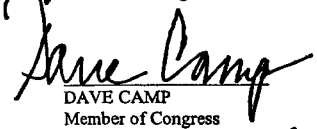
MICHAEL F. DOYLE
Member of Congress



FRANK MASCARA
Member of Congress



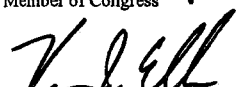
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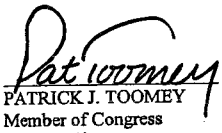
DAVE CAMP
Member of Congress



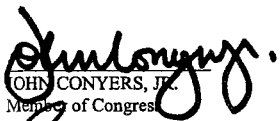
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Member of Congress



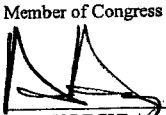
VERNON J. EHLERS
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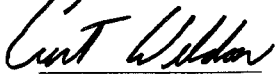
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GEORGE W. GEKAS
Member of Congress

WILLIAM F. GOODLING
Member of Congress

DON SHERWOOD
Member of Congress

cc: The Honorable Tom Bliley, Chairman House Committee on Commerce
The Honorable Michael Oxley, Chairman, Subcommittee on Finance and Hazardous Materials
House Committee on Commerce

The Honorable John H. Hager, Lieutenant Governor, President of the Senate
The Honorable S. Vance Wilkins, Jr., Speaker of the House
The Honorable John Paul Woodley, Jr., Secretary of Natural Resources
The Honorable Jo Ann S. Davis, Delegate to the General Assembly
The Honorable Kenneth R. Plum, Delegate to the General Assembly
The Honorable L. Karen Darner, Delegate to the General Assembly
The Honorable R. Creigh Deeds, Delegate to the General Assembly
The Honorable George W. Grayson, Delegate to the General Assembly
The Honorable Albert C. Pollard, Jr., Delegate to the General Assembly
The Honorable Bill Bolling, Senator
The Honorable Emily Couric, Senator
The Honorable Emmet W. Hanger, Jr., Senator
The Honorable Janet D. Howell, Senator
The Honorable Mary Margaret Whipple, Senator

April 20, 2000

The Honorable Tom Bliley
Chairman, Committee on Commerce
United States House of Representatives
Washington, D.C. 20515

Dear Chairman Bliley:

We are writing to express our sincere interest in working with you to address a serious problem that affects our states. As you know the lack of state and local authority to prevent landfills from being filled with out-of-state waste has been plaguing our states for a number of years. Since the Supreme Court ruled that it was up to the Congress to provide States with this right, we have sought federal legislation to address this problem.

We read with great concern, comments made by your spokesperson regarding this issue. In an interview with the Richmond Times Dispatch, your spokesperson stated that "there is zero probability" of passage of an interstate waste bill, given the ardent opposition from the New York delegation. The article also stated that you are looking to Governors to develop a consensus proposal.

Last year, we were very close to reaching such an agreement. After receiving your letter in March of last year expressing a willingness to work together on a bill, we made a concerted effort to pull together all interested states to develop a compromise on interstate waste and flow control. New York representatives were involved in a series of productive discussions over the course of several months that brought us very close to consensus. However, after consulting with New York City officials, they stated that they could not agree to the approach that New York State helped negotiate, and would not offer any counterproposal. At this point talks fell apart.

We were disappointed that our discussions ultimately did not yield an agreement with unanimous support. However, we do not feel that any one state should have the power to, in effect, veto any solution to this serious problem. We ask that you take into consideration the effort made by states to work with each other, and that you work with us, despite New York's inability, to reach an agreement on legislation. We realize you would like to see consensus among all governors, but it has become quite clear that this is not possible given that New York has no incentive to participate or come to an agreement without any visible action by Congress.

We believe sincere efforts on the part of both importing and exporting states can produce a measure that meets each of our respective state's needs. With your willingness to move forward with legislation, we will continue to work with other states in an effort to solidify an agreement.

Sincerely,

Tom Ridge
Christie Whitman
Frank O'Bannon
Bob Taft

COMMONWEALTH of VIRGINIA

Office of the Governor

James S. Gilmore, III
Governor

May 1, 2000

The Honorable Thomas J. Bliley, Jr.
U. S. House of Representatives
2409 Rayburn House Office Building
Washington, DC 20515

Dear Congressman Bliley:

As you know, the issue of the ever-increasing volumes of municipal solid waste being deposited in Virginia landfills, much of it from other states, has been of great concern to every Virginian who treasures the Commonwealth's natural beauty and environmental well-being.

Last year the General Assembly passed historic solid waste legislation to allow Virginia to assure her citizens that solid waste could be disposed of in a way that was protective of the environment and public health. This legislation could not be implemented, however, because of federal court action.

While we continue to appeal this federal court judgment, we have been working diligently with the Governors of both waste importing and waste exporting states in our region. Our staff has met regularly with those of the other concerned states, and has been a full participant in discussions to restrict interstate solid waste. I have reviewed the letter you received from the Governors of several of these participating states, detailing our efforts to date to reach consensus on a comprehensive approach to this troubling issue.

[redacted] which would confirm the states' ability to protect their lands and people, and to provide for reasonable restrictions on the importation of out-of-state waste.

With warmest personal regards,

James S. Gilmore, III
Governor of Virginia

JO ANN DAVIS
FIRST DISTRICT, VIRGINIA

COMMITTEES:
ARMED SERVICES

INTERNATIONAL RELATIONS

GOVERNMENT REFORM
AND OVERSIGHT

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May 2, 2001

The Honorable Paul E. Gillmor
Chairman
Subcommittee on Environment and Hazardous Materials
Committee on Energy and Commerce
2125 Rayburn House Office Building
Washington, D.C. 20515

Dear Chairman Gillmor:

House colleagues recently introduced legislation that would empower states to control the amount of municipal waste that is dumped within their borders. As you know, past attempts by states to limit the flow of interstate waste have been struck down by federal courts as a violation of the Commerce Clause, necessitating federal legislative action. We write today urging you to make interstate waste legislation a priority in the Subcommittee on Environment and Hazardous Materials.

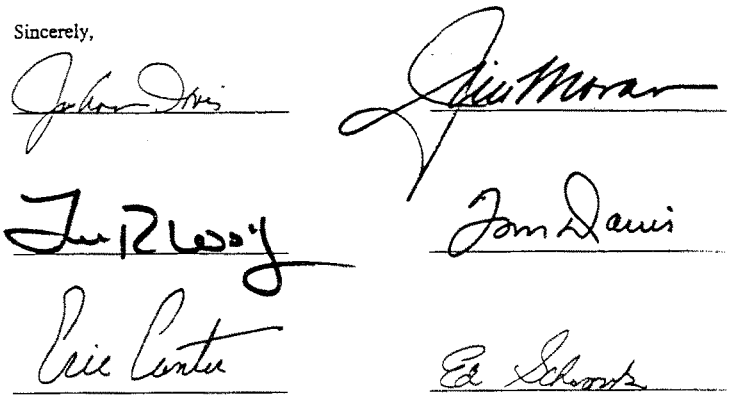
Virginians are becoming increasingly concerned about the trash trucks coming down Interstate 95, bringing out-of-state garbage through their communities to dump sites in the state. They are equally concerned about other forms of transport, but the added large truck traffic has made many local, rural roads unsafe. Not only does the interstate waste compromise the natural beauty and environmental quality of the Commonwealth, but being the second largest importer of trash in the nation is not consistent with our image and vision for Virginia. Our state legislators have spoken with unanimity on this issue, with both chambers of the 2000 Virginia General Assembly passing a resolution urging the 106th Congress to enact H.R. 1190, the Solid Waste Interstate Transportation and Local Authority Act.

Federal legislation has become even more urgent with the recent closing of the Fresh Kills landfill in Staten Island, New York. New York City currently appears to have no contingency for managing its garbage other than shipping it out of state, and citizens of the Commonwealth overwhelmingly oppose increased volumes coming within our borders.

We urge you to act expeditiously on interstate waste legislation, and also urge that you ensure that any legislation reported by the subcommittee be tailored to adequately address all the unique and varied state laws and regulations governing and pertaining to waste disposal sites.

Thank you for your attention to this matter, and we look forward to working with you to fashion commonsense restrictions on interstate waste disposal.

Sincerely,



Mr. DINGELL. While the scheduling of this hearing unfortunately competes with floor action on the committee's energy bill, which I must attend to, I want to commend you, Mr. Chairman, and I want to commend the subcommittee and the ranking member for addressing this issue. It is enormously important, not only to the environment but to our citizens. I look forward to action on these bills when Congress returns after the August recess. I thank all the witnesses at the table for their participation and assistance, and I thank you for holding this hearing, Mr. Chairman.

Mr. GILLMOR. The gentleman from New Hampshire.

Mr. BASS. Thank you, Mr. Chairman. I appreciate your holding this hearing. It is interesting to see that almost every State is an importer of solid waste. It is hard to find the ones that are exporters. Obviously, they exist. My home State of New Hampshire imports close to half a million tons of solid waste from other States and perhaps from Canada each year, so I will particularly interested and sensitive to the issues that are involved here. They are problems that are not going to go away, and I think this committee ought to face them head on and make a determination as to where we are going to go. I appreciate the chairman's holding the hearing, and I look forward to the testimony.

Mr. GILLMOR. The gentlelady from Missouri.

Ms. MCCARTHY. Mr. Chairman, I do not have remarks this morning. Kansas is working cooperatively with Missouri on the western side of the State and with Illinois and Missouri on the eastern side of the State. We seem to have good regional cooperation. I do have a concern about the caps issue. I look forward to the testimony of the witnesses, and I am glad that they are here. And I yield back the balance of my time.

Mr. GILLMOR. The gentlelady yields back. The gentleman from Illinois, the vice chairman of the subcommittee, Mr. Shimkus.

Mr. SHIMKUS. Thank you, Mr. Chairman. I, too, will be brief. I want to welcome my colleagues here. Very interesting issue. My particular part of the world has Illinois being third largest exporter of solid waste but being the fifth largest importer of solid waste.

Of course, we know Chicago exports a lot, but I border the St. Louis Metropolitan Area where we receive a lot of St. Louis Metropolitan trash.

So I am betwixt and between and befuddled, and I look forward to the hearing as we move this legislation forward. Thank you, Mr. Chairman.

Mr. GILLMOR. The gentleman from Minnesota.

Mr. LUTHER. Thank you, Mr. Chairman. I will be brief as well out of respect for our distinguished panel here today.

The issue of interstate transportation of solid waste is a major issue which warrants the attention of our committee. Today, States are virtually helpless in dealing with the increasing problem of their landfills being filled or quickly filling to capacity. However, Mr. Chairman, I do want to share with you one concern I have, which is that the scope of this hearing does not deal with what may very well be at the heart of this problem; that is, we simply generate too much waste and have too little land. Authorizing States to impose importation bans will do little, if anything, to solve this basic fundamental problem.

As such, Mr. Chairman, I hope that in future hearings we can deliberate on alternative means of grappling with the creation, transportation, and disposal of solid waste. For instance, Mr. Greenwood's flow control bill, H.R. 1214, which is not the subject of this hearing, is very worthy of the subcommittee's attention, as are other solid waste measures, such as the promotion of recycling and the moderation of waste generation.

So those conclude my comments, and I look forward to the testimony. Mr. Chairman, thank you again for holding this hearing.

Mr. GILLMOR. The chairman now recognizes for an opening statement the gentleman from Pennsylvania, Mr. Greenwood, who has been a leader in dealing with this issue and is the principal sponsor of one of the subject to this hearing. Mr. Greenwood.

Mr. GREENWOOD. Well, thank you, Mr. Chairman, and than you so much for holding this hearing, and I am not going to be brief, because I have been waiting for this hearing for a while, and I am going to plague you with the full 5-minute version.

Again, thank you, Mr. Chairman, for scheduling this hearing on the prospectives on interstate and international shipments of municipal solid waste. The influx of municipal waste into Pennsylvania continues to escalate, and Pennsylvania continues to be the largest importer of municipal waste in the country—a dubious honor Pennsylvania wants very much to relinquish. But the U.S. Supreme Court has spoken, and Pennsylvania and no other State will have the ability to control waste crossing State borders until Congress grants States that authority. That is why I, joined by many of my colleagues, introduced H.R. 1213, the Solid Waste Interstate Transportation Act of 2001.

Legislation on the interstate shipment of interstate waste has been introduced in every Congress since the 100th. My involvement began 8 years ago tomorrow when, as a freshman Member of Congress, I joined other Members in the introduction of H.R. 4779, which would allow States and local governments to regulate the transport of municipal solid waste. That legislation passed the House. It was held up in the Senate by one lone Senator. Unfortu-

nately, we haven't come that close to enacting interstate waste legislation since that Congress, but I am hopeful that will change in this Congress.

There is some industry sentiment that we should leave the waste market open and let the free enterprise system work. I can tell you that Pennsylvania tried that approach and it did not work. In 1986, Pennsylvania exported—in 1986, Pennsylvania exported 3 million tons of municipal waste. In 1988, Pennsylvania did the responsible thing: Reenacted legislation requiring counties to plan for the management and disposal of municipal waste and instituted a mandatory recycling program. As a member of the Pennsylvania State senate at that time, I played an active role in the development of that legislation. Pennsylvania successfully fought the NIMBY syndrome, and over the next several years sited a number of new facilities.

By 1993, Pennsylvania exported only about 800,000 tons of waste, but our reward for creating additional capacity for ourselves was that we were now importing almost 4 million tons of municipal waste. By 1995, that figure grew to almost 5.2 million tons, and by 2000, the State received 9.8 million tons of municipal waste from other States. That figure represents 40 percent of all of the municipal waste disposed in our State and almost 30 percent of the national total interstate shipments. Pennsylvania exports only about 500,000 tons of municipal waste, and about 75 percent of that waste goes to a facility that happens to be located near the Pennsylvania/Ohio border.

The problem is that other States have not acted as responsibly. Instead about 20 other States send their waste to Pennsylvania. Our neighbor to the north, New York, continues to be the largest exporter of waste to Pennsylvania. In 2000, almost half of the out-of-State municipal waste disposed in Pennsylvania came from New York. Despite the already large amount, waste exporters from New York are expected to grow—waste exports are expected to grow even further with the closure this past March of New York's Fresh Kills Landfill, the City's last disposal facility.

Without the ability to exert some control over the amount of out-of-State waste coming into Pennsylvania, the facilities we have permitted will fill to capacity, and that simply is not fair. Even when solid waste is landfilled or incinerated using state-of-the-art technology, there are environmental costs and risks associated with disposal. Additional truck traffic, air and water quality concerns, and changes in the landscape make disposal facilities unwanted neighbors in all communities. Every State should take the responsibility to dispose of its trash using the best available technology. No State should be able to avoid this responsibility, and no State should bear more than its fair share of the burden unless it chooses to.

We will stand the best chance of moving forward with waste reduction, recycling, and environmentally sound technology when all States are stakeholders in the outcome. The solution is for other States to site facilities within their own borders. As long as States can continue to export unlimited waste to other States, they will have no incentive to site facilities. And I might add, until H.R. 1213 is scheduled for markup, States like New York have no incentive to come to the table in attempt to reach some type of com-

promise with the big impacted States like Pennsylvania, Virginia, Ohio, Indiana, and Michigan.

I look forward to hearing from the panel of our colleagues, each with a special interest in this issue. I am pleased to welcome my colleague from Pennsylvania, Mr. Kanjorski, who shares my concern about Pennsylvania's problem, and I appreciate my friend, Congresswoman Davis' interest in 1213. We have already discussed some changes she would like to see in the bill to address specific problems in her home State of Virginia, and I look forward to continuing to work with her to address her concerns. I also look forward to hearing from the heads of the environmental agencies in four of the impacted States, and I would like to thank them for working with us in the development of H.R. 1213.

I would especially like to take the opportunity to welcome Dave Hess who was appointed Pennsylvania secretary of Environmental Protection by Governor Ridge in March of this year. I have known David for a number of years. He served as the director of the Environment and Energy Committee in the Pennsylvania senate while I served in the senate. And he has served in several positions at the DEP. I can't think of anyone more worthy of Governor Ridge's appointment to that position.

Mr. Chairman, I want to thank you again for scheduling this hearing, and just as I thank you today for holding the hearing, I am going to be consistently urging you to schedule H.R. 1213 for subcommittee consideration. States like Pennsylvania and Ohio have suffered long enough. I look forward to working with you to provide States the relief they want and we need. Thank you, Mr. Chairman.

Mr. GILLMOR. The gentleman from New York, Mr. Towns.

Mr. TOWNS. Thank you very much, Mr. Chairman, for holding this hearing. I hope that by the end of this hearing many of my distinguished colleagues will agree with me. I also hope that today's hearing will clarify many of the misunderstandings about the relationship between municipal solid waste exporters and municipal solid waste importers. I know that this issue has been a popular one for many, many years, but too often the arguments are framed in the context of a zero sum game. For example, people say, "New York is dumping on blah, blah, blah, blah, blah, blah." Translation: "New York is sending its garbage to our State, and we have no say in the process, and we derive no benefits from it." Well, while this may sound good and be an easy argument to make, but it is not true. The fact of the matter, as my friend and the honorable first deputy mayor of the city of New York will testify to later, as a part of New York City's plan to close Fresh Kills Landfill, New York City is required to enter into host community agreements with the importing community before a single ton of MSW is moved.

In addition, these host communities' agreements call for fees to be paid to the host community. These fees can often make a significant difference to communities providing funding for a variety of services and amenities that would not otherwise be affordable. Also increased environmental standards at landfill facilities have increased the cost of landfills significantly and resulted in the closing of numerous small facilities. This change in the industry has cre-

ated more of a regional approach to waste management and placed increasing pressures on landfills to attract additional customers to make their landfills more financial viable.

The fact that these landfills are receiving out-of-State MSW has no doubt played a significant part in their ability to keep their tipping fees low and save their communities significant amounts of money. Today, we will hear some remarkable claims, protectionist fears, and other misguided but well-intentioned efforts to change the marketplace after numerous companies have made long-term financial plans based on the current competitive market system. I urge my colleagues to take a very serious look at this and to avoid the temptation to throw large urban communities into chaotic situations as they desperately try to replace well thought-out solid waste management plans based on current systems.

On that note, Mr. Chairman, I yield back, and I am anxious and eager to listen to the testimony coming from the witnesses. We have a distinguished panel before us.

Mr. GILLMOR. The gentleman yields back. The gentleman from New York, Mr. Fossella.

Mr. FOSSELLA. Thank you, Mr. Chairman. And let me echo and agree with my good friend from New York, Mr. Towns. I agree with much of what he said, particularly the "blah, blah, blah, blah, blah, blah."

I think, in all seriousness, this is an important issue, and I know it is important for a lot of folks, not only on this committee but of this panel and others who will testify, including, as Mr. Towns said, the first deputy mayor, Joe Lhota, who is going to articulate, I think real well, that we need to strike the right balance. And I know my good friend, Mr. Greenwood, acknowledged the closing of the Fresh Kills Landfill, which is an important step because it was an environmental nightmare, an unlined landfill in the city of New York, and we did the right thing by closing it, in large credit to folks like Mayor Guliani and Governor Pataki.

Having said that, going forward, I think we need to look at the other side of this equation, and that is that garbage is generated by human beings, and it needs to go somewhere. And that as far as New York City is concerned and New York State, it is not going anywhere that it is not wanted by a local community. And those communities are accepting it willingly in environmentally safe landfills or resource recovery facilities, incinerators or whatever you want to call them. And to them it is a business arrangement. It is the free flow of goods across the interstate highway system. It means jobs; it is a tax base.

I don't know of any situation, for example, that the city of New York has entered into over the years where the local community has not been willing to accept the garbage willingly. In fact—and I hope Mr. Lhota mentions it later—I would be curious to know how many local communities have willingly offered to accept, for example, New York City's garbage above and beyond what we have done. One community, maybe 15, 12, I don't know, have responded to the RFPs.

I think it would be a mistake if we move down the road to limit a State's ability to send goods across the highway system, for example, or the river, because you begin to slide down the old slip-

pery slope of limiting other goods that can flow freely across the States. I don't want to take away from the deep concern that a lot of members have about trying to limit garbage coming into their districts. I think that argument is subordinate to the overall one that Congress should not override or make null and void the agreements of municipalities that willingly accept our garbage.

And, Mr. Chairman, I look forward to this distinguished panel, as well as others, but I just think, as I say, there is another side to this argument. New York is not alone. Many States in this country export garbage, and when Congress steps in to try to limit those States' ability to do so—if they want to enter into voluntary agreements or a regional approach, fine; I think that is a healthy thing. But if Congress is going to step in and limit those States' ability to export garbage, I think they are going to have unintended consequences, and a lot of folks are going to wake up and realize it is going to be a big mistake. So I thank you, Mr. Chairman, and I yield back.

Mr. GILLMOR. The gentleman from Wisconsin.

Mr. BARRETT. Thank you, Mr. Chairman. Every freshman legislator probably at every level knows the importance of making the argument in favor of a level playing field. And probably nowhere is that more vivid than this discussion, because rather than level playing fields what we have right now are really unlevel garbage dumps throughout the country. And that is why those of us who come from States that are importers of garbage view this as such an unfair issue. It is interesting for me to hear my colleagues, and I think this is obviously not a partisan issue; it is really an issue of whether your State is an importer or an exporter of garbage.

What concerns me, again coming from a State that is an importing State, is the perception in Wisconsin is that we, as a State, have developed a very good recycling law, one of the more progressive laws in the country, encouraging consumers and businesses to recycle. Some of the States from which we import garbage have chosen not to take that route and have not passed laws that encourage recycling, and in some instances have actually closed down recycling facilities.

I think what this committee and this Congress has to do is focus on that issue to make sure that States are not given a pass where they decide that the easier course of action is simply to export garbage rather than to work responsibly. Because at the end of the day, the garbage is either going to be put in a landfill or it is going to be recycled. And if we are concerned about that, I think we have to do more for recycling.

So I hope that that is part of the focus of this hearing. I certainly agree with the gentlemen and the gentlewomen from Pennsylvania who have been leading this charge that we should move forward on H.R. 1213, and I hope that the Chair will consider that bill for a markup as well. And I yield back the balance of my time.

Mr. GILLMOR. The gentleman yields back. If there are no further opening statement, I would like to call our first panel. Our first panel is made up of five Members of Congress who have a special interest in this legislation. The distinguished group includes Representative Mike Rogers, who has introduced H.R. 1927 to place limits on waste coming into the United States from Canada. Next

we have Representative Paul Kanjorski of Pennsylvania, who has authored H.R. 667, also the subject of our hearing. Panel also includes Representative Jim Moran of Virginia and Dave Bonior of Michigan. And we have Representative Jo Ann Davis who has put in a great deal of effort in this subject over the last couple of months.

I would like to welcome you all to the committee, and the Chair would propose that we will start on the Chair's left and proceed down the line. If any of the members have a need to depart earlier, we will be happy to change that schedule.

Representative Rogers.

STATEMENTS OF HON. MIKE ROGERS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MICHIGAN; HON. PAUL E. KANJORSKI, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF PENNSYLVANIA; HON. JAMES P. MORAN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF VIRGINIA; HON. DAVID E. BONIOR, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MICHIGAN; AND HON. JO ANN DAVIS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF VIRGINIA

Mr. MIKE ROGERS. Well, thank you, Mr. Chairman and distinguished members. I appreciate Mr. Greenwood's efforts over the years. In trying to tackle this difficult issue, I have co-sponsored your bill as well and do believe this is a serious issue. But to my friends from New York, Mr. Fossella and Mr. Towns, I think have articulated why 8 years later we are still debating the flow of interstate trash in America. There are more export States by net than there are import States by net. That poses a problem in the debate in ideology.

With that in mind, we have a problem in Michigan and a serious problem that is only going to get worse in the very near future. I have some great friends to the north, in Canada. I appreciate the import of their beer, their hockey players. I do not appreciate the import of their dirty diapers and Canadian bacon scraps. And we are getting a ton of it literally, Mr. Chairman.

You know, we are a water State; we are very porous. The aquifers run from stem to stern in Michigan. So siting landfills is a difficult challenge for us. Our DEQ Director is here today and is going to explain what Michigan goes through. And we have taken the steps early on to be aggressive in meeting our needs for landfill space. We have about 15 years of landfill space, and we take into consideration, obviously, all the siting requirements that go with it. Many of you have mentioned it: traffic problems, site source pollution, we have talked about aquifers and watershed and all of the things that affect it when you site these individual places. And Canada, unfortunately, has not stepped up to that plate.

And the problem they pose is this: Just in the last year alone there has been an 80 percent increase—80 percent increase—in the amount of trash flowing from Canada to the United States, specifically Michigan. We went from a 15-year supply of landfill space that is likely to get cut in half. And here is the dangerous part of that: In 2003, Toronto, who is the largest producer of exports to Michigan, is closing both of its landfills. After 2003, they will have

no landfill space capacity, and we know where that trash is coming. It is coming to Michigan.

What we have done is developed a bill that is pretty narrowly crafted. It is crafted with NAFTA in mind, with GATT in mind, with the Basil Convention in mind. And in each one of those agreements, every nation that signed understood that there were environmental and conservation issues that needed to be dealt with by every nation individually. I don't think anyone in good conscience can argue that siting a landfill, accepting trash does not have an environmental or a conservation impact on your State and our communities. We think that we have cleared those hurdles in both NAFTA, GATT, and the Basil Convention even though we have not officially signed on—the Senate has not confirmed that convention.

We had a case in Michigan recently, Mr. Chairman, involving a landfill, where Canada sends a great deal of trash, and the case was settled in 1997. It was found that a high percentage of PCBs, which is prohibited from being dumped in our landfills, were present in the trash that was being delivered, as well as cemetery waste, which included, "soiled coffins." Quite frankly, Mr. Chairman, I don't even want to know what soiled coffins are, but we were getting a bunch of them. It was creating a significant problem. That landfill was actually fined through a court case by one of our environmental groups there about $114,000 for its PCB problems and this cemetery waste, including soiled coffins.

The problem is there is no good way to inspect the trash that comes in from Canada. There is no good way. Our Governor at one time proposed putting border inspectors on the borders trying to inspect trash coming in. It is almost impossible to do it. What this bill does, very narrowly, is say, "Look, we are going to give the States the ability to regulate, if not prohibit, the trash coming in from foreign nations." Mr. Chairman, you have trash coming into Ohio from the Virgin Islands. Washington State takes Canadian trash and gets a bunch of it. New York, actually, one of the large exporters, gets Canadian trash.

We have got our own problems and our own difficulties here in America to try to work out our differences about who should take our neighbors' trash. What we are saying is let us have a little reasonableness here and allow these States to tell places like Canada, "No." And we can do it. BANCORP v. Board of Governors, Mr. Chairman, very clearly states that Congress has the ability to give the States this authority. We ought to do it; we can do it now. Let us continue the debate on Mr. Greenwood's bill, but let us save Michigan 4.2 million cubic yards of trash every year. Thank you, and I yield back the balance of my time.

[The prepared statement of Hon. Mike Rogers follows:]

PREPARED STATEMENT OF HON. MIKE ROGERS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MICHIGAN

Chairman Gillmor, Ranking Member Pallone, and Subcommittee Members, I appreciate the opportunity to testify today on the issue of municipal solid waste and its treatment by federal and state governments. I understand it has been several years since a congressional committee has taken a close look at what is an increasing problem for state governments—handling the often large volume of trash imports coming across their borders.

Mr. Chairman, as you and your subcommittee colleagues are aware, I have introduced bipartisan legislation this session designed to give states the tools to address

the tidal wave of foreign trash crashing against their borders. First, I will describe the problems associated with the increase in foreign waste imports in the State of Michigan. Second, I will describe attempts by state officials to combat those problems. Third, I will discuss H.R. 1927, legislation I have sponsored to give states the authority to prohibit or restrict the importation of foreign municipal waste consistent with judicial and constitutional precedent. Lastly, I will discuss the international law implications of my proposal.

I. THE PROBLEM IN MICHIGAN

A. Dramatic Increase in Importation of Canadian Municipal Waste

Michigan's importation of municipal waste from Canada has been a growing problem in my state for a number of years as the amount of trash imported from Canada increases almost exponentially. In 1999, more than two million cubic yards of foreign municipal waste was imported to the State of Michigan from our Canadian neighbors. Last year, that number grew to 4.2 million cubic yards—an increase of 80 percent. Today, nearly 45 percent of the municipal waste imported to Michigan originates in Canada.

The situation is especially acute in a number of the counties I represent in Michigan's Eighth Congressional District. For example, 100 percent of Genessee County's municipal waste imports come from Canada, as do nearly all of Washtenaw County's imports, and garbage imported to Oakland County accounts for almost half of its imported waste.

Michigan's ability to meet its own landfall disposal needs is seriously compromised by the dramatic increase in Canadian municipal waste imports. Based on current usage statistics, it is estimated that Michigan holds capacity for 15-17 years of disposal in its landfills. However, with the dramatic increase in the importation of municipal waste, Michigan's current capacity could be filled in less than 10 years.

While Michigan has done an excellent job planning for its waste disposal needs, our neighbors in the Canadian Province of Ontario have not. Ontario's waste shipments to Michigan and other states are growing as the Toronto area closes its two remaining landfills. At the beginning of 1999, Toronto area municipalities were managing about 2.8 million tons of waste annually, of which about 350,000 tons were shipped to Michigan. However, according to the Congressional Research Service, by 2003, there will be virtually no local disposal capacity. Barring unforeseen developments, most of this waste is expected to be sent to Michigan for disposal.

B. Environmental Impact of Increased Waste Importation

In addition to rapidly depleting the State of Michigan's landfill capacity, a number of environmental concerns are implicated by Canadian municipal waste imports.

One, Canadian trash does not have to meet the same environmental requirements imposed upon municipal waste created within Michigan's own borders. In fact, the Public Interest Research Group in Michigan filed a lawsuit against the City of Toronto for sending municipal waste to Michigan that was contaminated with PCB's, which subsequently leaked into our groundwater supply.

Two, Michigan is the only state in the Union to have a ten-cent deposit on many beverage containers. Michigan has placed a high priority on recycling and in turn, these items are noticeably absent from many of Michigan's landfills. However, landfills that accept Canadian municipal waste may have significant amounts of these items that would have been recycled in Michigan. In short, Michigan's recycling efforts are being undermined.

Three, with Michigan's landfill disposal capacity rapidly dwindling due to increased foreign imports, action will be needed to address the state's future disposal needs. Siting new landfills requires significant green space that would otherwise not have to be developed. At a time when many in Congress, and in our state legislatures, are attempting to preserve green spaces and rural areas, siting new landfills to accommodate foreign waste is completely contrary to that goal.

Lastly, in addition to the problems associated with creating more landfills, such as leakage into groundwater, noise pollution, and foul odors, the increased importation of waste creates indirect problems. One concern often voiced by my constituents and other Michigan citizens is the heavy truck traffic associated with increased Canadian imports. In fact, the Mayor of Windsor, Ontario has publicly stated his concern over the damage the large volume of garbage trucks are doing to his region's highway infrastructure.

Led by Governor John Engler and the Michigan Department of Environmental Quality, we have done a good job of planning a long-term, environmental strategy for waste disposal in Michigan. However, disposing of another nation's waste was

not a part of that plan. In fact, without action in the United States Congress, policymakers in states like Michigan are essentially unable to plan accordingly.

C. Other States

Evidence is growing that other states are not immune from the problems of foreign municipal waste imports. Fifteen percent of New York and Washington states' imports originate in Canada. Furthermore Mr. Chairman, your home State of Ohio receives imports from the Virgin Islands, while New Mexico and Texas receive municipal waste imports from Mexico.

I do not testify today to sound an alarm, but the fact is that other states are anticipating similar problems with respect to trash importation. The fear is that should Michigan's efforts to restrict foreign trash imports succeed, states such as Pennsylvania could be next. Pennsylvania, like Michigan, has kept costs for waste disposal fairly low.

It is exactly those states with sound planning and low disposal costs that the Province of Ontario finds so appealing. As stated earlier, whether the result of poor municipal planning or simply a "not in my backyard" position, the City of Toronto is not taking necessary action to meet its municipal waste disposal demands. I believe that states that have acted responsibly in planning for waste disposal should not be forced to have such planning upended by a foreign body, which is why Congress should give the States some flexibility in controlling foreign waste imports.

II. LEGISLATIVE ACTION

A. State Attempts to Address International Waste Issues

Mr. Chairman, like yourself and many of our congressional colleagues, I had the honor of serving in the state legislature prior to my service in Congress. During my service in the Michigan Senate, we recognized the problems associated with the influx of foreign and out-of-state municipal waste and sought numerous legislative solutions.

For example, Michigan adopted legislation that allowed individual counties to make their landfills off-limits to municipal waste from other states or nations. Unfortunately, as you will likely hear from Michigan's Director of Environmental Quality on the next panel, this legislation was ruled unconstitutional by the courts. In striking down Michigan's law, the courts followed the landmark *City of Philadelphia v. New Jersey* decision in which the Supreme Court struck down a New Jersey statute prohibiting the importation of most out-of-state waste.

While efforts continue under Michigan's capitol dome in Lansing to restrict Canadian municipal waste, these efforts will be extremely difficult without support from Washington, D.C. For example, Michigan State Senator Ken DeBeaussaert has sponsored legislation to ban beverage containers in Michigan landfills. As described earlier, Michigan has a very successful deposit program on beverage containers and the state's enactment of such legislation would provide a significant hurdle for Canadian trash imports to meet. Though the feasibility of this legislation deserves further debate, its pursuit clearly demonstrates the desire of state policymakers to regulate foreign municipal waste and gain some amount of control over waste flowing across their borders.

As a former state senator, I understand that Michigan and other state governments know what is best for their citizens when it comes to trash imports, but are unequipped to deal with the problem absent congressional action. Under H.R. 1927, the Solid Waste International Transportation Act, if a state chooses to import trash from Canada or any nation, they certainly have that choice. And if the individuals elected to represent our constituents in various state legislatures want to restrict or limit the influx of foreign waste, my legislation allows them that option as well. The bottom line is empowering states to make their own decisions.

III. H.R. 1927, THE SOLID WASTE INTERNATIONAL TRANSPORTATION ACT

A. Legislative Intent and Constitutional Concerns

As states have attempted to regulate waste imports, the federal courts have declared these state restrictions unconstitutional. If states are to have such authority, congressional action is required. Given these constitutional difficulties faced by state legislatures and governors in addressing foreign waste, I introduced H.R. 1927, which gives states the authority to prohibit or restrict the importation of foreign trash or waste consistent with judicial and constitutional precedent. This bipartisan legislation amends the Solid Waste Disposal Act to provide the necessary express statutory command with respect to foreign municipal waste.

As discussed earlier, the 1978 *City of Philadelphia v. New Jersey* decision struck down a state statute that prohibited the importation of most out-of-state municipal

waste partially on the basis that the Federal Solid Waste Disposal Act, had "no clear and manifest purpose of Congress to pre-empt the entire field of interstate waste, either by express statutory command, or by implicit legislative design." The Solid Waste International Transportation Act amends existing federal law to provide that express statutory command.

Additionally, in *Northeast Bancorp v. Board of Governors of the Federal Reserve System* the Supreme Court said "when Congress so chooses, state actions which it plainly authorizes are invulnerable to constitutional attack under the Commerce Clause." H.R. 1927 would be a plain authorization of a state's authority to prohibit or limit incoming foreign municipal waste.

B. International Legal Concerns

In the debate amongst the varying approaches to solving the international and interstate waste issue, much is made of international trade agreements implicated by allowing state governments the authority to regulate foreign municipal waste. I welcome the opportunity to address this issue. At the onset it is crucial to note that there is no existing legal precedent explicitly prohibiting the aim of H.R. 1927—giving states the authority to limit or prohibit the importation of foreign waste. The fact is that without congressional action, our states will never even have the opportunity to tackle the issue in a manner consistent with international trade law.

For example, numerous commentators claim the North America Free Trade Agreement (NAFTA) proscribes Congress from granting states the authority provided under H.R. 1927. I respectfully disagree. First, it is clear that nothing in my legislation violates the principles of NAFTA as it only gives the states an opportunity to regulate foreign waste. The ball is then in the state's court—so to speak—in that it provides states the opportunity to craft reasonable limits consistent with international law.

Under Article 2101 of NAFTA, which incorporates the General Exceptions of the General Agreement on Tariffs and Trade (GATT) Article XX and its interpretive notes, the United States, a State, or locality can place environmental-based restrictions on trade if "necessary to protect human, animal or plant life, or health." Once Congress grants states the authority under H.R. 1927 consistent with our Constitution, the states would have an opportunity to approve legislation consistent with the NAFTA exception.

For example, if a state decides to forbid disposal within its borders of any municipal waste containing PCBs because of the environmental hazards associated with its contamination of groundwater, I would strenuously argue that such a state law would pass international muster based on the recognized environmental health exception. We should not simply foreclose the option for the states to make innovative policy and legal arguments based on their state's individual needs. It is possible some states' arguments won't meet international law scrutiny and will be shot down, but it is just as likely some will survive. The irrefutable fact is that this is an area of unsettled law and there is no reason Congress should not give the states a chance to define that law and legislate in the best interests of their constituents within the environmental health exception to NAFTA.

In addition to environmental measures, another murky area of international law is the definitional treatment of solid municipal waste. For example, I have been advised by international and domestic legal counselors that for NAFTA provisions to apply, the item in question must be defined as a "good." While some may claim municipal waste is a good, the issue remains unsettled, and states would have the ability to argue that the distinctive characteristics of municipal waste do not rise to the level of a "good." A good is something that upon trade, value can be added to or derived from. By definition, foreign solid municipal waste is only coming into a state for disposal. This is very different from all other types of waste, such as hazardous or industrial-grade waste, which must be processed.

C. Legislative Environment

As I stated during my introductory remarks, I am very pleased that for the first time in several years, Congress is showing a willingness to tackle the trash issue head-on. The fact that the Subcommittee has three different proposals before it today underscores the urgency for congressional action.

While my legislation only addresses the issue of foreign municipal waste, I am certainly cognizant of the ever-present difficulties surrounding the treatment of interstate waste. In fact, I applaud the efforts of my colleagues to address that difficult issue and have joined as a cosponsor to Congressman Greenwood's legislation, H.R. 1213, to give states and municipalities more control over interstate waste. However, given the sensitive political and policy implications of interstate waste, I believe Congress may be more successful in coming to agreement on the foreign

waste issue. H.R. 1927 attempts to peal off a small, but significant, part of giving states more control over the flow of waste into their borders.

Again, I thank the Subcommittee for the opportunity to testify and would welcome any questions.

Mr. GILLMOR. Mr. Kanjorski.

STATEMENT OF HON. PAUL E. KANJORSKI

Mr. KANJORSKI. Thank you, Mr. Chairman. I make the observation the reason Canada can't handle that waste is it is not large enough.

Mr. Chairman, on my way down here today, one of my staff members called attention to one of the famous holidays in Pennsylvania—Groundhog Day—and a famous movie was made after that. And that is every morning you wake up, you relive the entire circumstance. For the last 12 years, I have been on this issue introducing legislation, and every time the committee does something it reminds me of Groundhog Day. I hope we move off that. And regardless of what we do or what this committee recommends, I sponsor it. I am the sponsor of a particular piece of legislation that is rather simply crafted after the low-level radiation legislation. And it basically says every State has the responsibility of taking care of its own trash, but it can enter into voluntary compacts with neighboring States or other States to handle trash in a voluntary compact way. That handles everybody's problems.

Clearly, I represent a district in the State of Pennsylvania, and when you listen to the numbers of what we do, in the year 2000, 9.8 million tons of municipal waste and 2.5 million tons of non-hazardous waste from other States. That is an increase of 2 million tons in 1 year. Forty-two percent of the total waste disposed of in Pennsylvania comes from other States. We love to be first and big and important, but we really don't want that importance, Mr. Chairman. And I have listened to the testimony of my friend Mr. Towns, the other members of New York. Look, this should not be a war between the States. This is a very practical problem.

And one of the reasons Pennsylvania gets disadvantaged is, unlike other States, we have 2,500 municipalities, 90 percent of which are under 3,000 in population. And when a State like New York comes in and dangles incredible payments of non-taxes, subsidies, and everything else, surely these States—or these municipalities are tempted to take this agreement. This is a State issue. All of the people of Pennsylvania are interested in what is placed in Pennsylvania, regardless of where it is placed. And so should the State of New York be that interested, and so should the people of the United States be interested.

When we are dealing with municipal waste we are not dealing with a commodity that disappears. Basically, we are the stewards of this land, but the future generations will use this land, and we have to make good policy decisions that will affect well on the environment that they inherit and the lives and the quality of their lives as they inherit it. And what we do with municipal waste will compound that very problem.

You know, I would suggest, in listening to some of the statements of the members, if we were to allow communities to decide whether they could take nuclear waste in this society, I can find

a lot of poor communities who would opt to take nuclear waste. Would we, in the individual States, want to accept that? Would the country, as a whole, accept that as good public policy? Clearly not.

Mr. Chairman, I brought an example of something today. Municipal waste not only fouls the water, not only contaminates the air, but it also kills people. I have a photo I want to show you, and I will cover up Mr. Rogers here for a moment so that you can see it. This is a picture of Monroe County, Pennsylvania, the heart of the Poconos. This is where so many of the good people from New York and New Jersey come over to visit Pennsylvania and recreate. But on 81 a trash truck overturned in January and squashed two Pennsylvanians. That is not an unusual sight in Pennsylvania. These trucks run up and down this highway every day.

And what did we find as a result of that? Pennsylvania and the Governor—and I compliment them—put into effect Operation Clean Sweep. They went in to inspect these trucks, and they found hundreds of unsafe trucks. One-third of them had to be taken off the road. They had useless breaks, cracked frames, and were operating grossly overweight. Operators were arrested for drunk driving and driving with suspended licenses. Now that is not the responsible actions of out-of-State people.

What waste has become is out of sight, out of mind culture. You don't see, it is covered, it disappears into the land, and a result a lot of people don't want to and feel no responsibility to take the responsibility for it. Pennsylvania should be complimented, Mr. Chairman. It has one of the most advanced recycling and disposal systems in this country, but as a result we have been punished. And it is time that we reward responsible States and not punish them, and give these States the ability to control the importation of waste through any of the bills that are pending before this committee. I sponsor them all, I support them all, but let us move on. We must protect the environment, promote local control, promote responsible waste management, but most of all protect the health and safety of our constituents. Thank you, Mr. Chairman.

[The prepared statement of Hon. Paul E. Kanjorski follows:]

PREPARED STATEMENT OF HON. PAUL E. KANJORSKI, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF PENNSYLVANIA

Mr. Chairman, I welcome this opportunity to testify before you on an issue that has long been of particular concern to me and the citizens of Pennsylvania that I represent; the issue of interstate shipment of municipal solid waste. I commend you, the ranking member, and the committee for your leadership in reviewing a practice that threatens our environment and our public health and safety.

Since the late 1980s the tonnage of interstate trash imports in several states across the nation has risen dramatically. In response, I have reintroduced legislation that would allow states with comprehensive management plans for the disposal of all waste generated within their own borders to limit the importation of out-of-state trash, and to form voluntary regional compacts with other states to import or export their trash. In fact, this bill, H.R. 667, the Solid Waste Compact Act, was the first bill to address this important issue in the 107th Congress. Additionally, I am an original cosponsor of other legislation we will discuss today, H.R. 1213, the Solid Waste Interstate Transportation Act, and H.R. 1927, the Solid Waste International Transportation Act.

Total interstate waste shipments continue to increase as older local landfills close and the waste management industry consolidates. My state of Pennsylvania is forced to accept more garbage from other states than any other state in the nation, by far. In 2000, Pennsylvania imported 9.8 million tons of municipal solid waste and 2.5 million tons of other non-hazardous waste from other states, an increase of al-

most 2 million tons from the 10.4 million tons of out of state trash imported the previous year. In 1999, out-of-state trash made up 42.8% of the annual total waste disposal in my state. This past year, 20 other states reported increased imports of out-of-state trash. Besides Pennsylvania, states such as Virginia, Michigan, Ohio, Indiana, Illinois, Wisconsin, and Oregon share these concerns and each import over a million tons of out-of-state trash annually. Further, New Hampshire, New York, New Jersey, Kentucky, South Carolina, Georgia, and Nevada, each import over a half million tons of out-of-state trash annually.

From my perspective, the legislation offered by my colleagues and me is an attempt to put into action two important ideals that are often talked about in Washington—protecting the environment and promoting local control. It would protect the environment by limiting the current practice of transporting garbage hundreds of extra miles from the source, which increases air pollution. It would promote local control by giving states, which already have the duty to ensure that solid waste is disposed of properly, the right to determine whether to accept the waste from other states and nations.

This legislation is all the more crucial in light of the tragic loss of two lives in a recent collision in my district with a truck carrying out-of-state trash. My district includes part of Monroe County, Pennsylvania, where two people were killed last January on Interstate 80 when a truck carrying out-of-state garbage lost control and crashed into their cars. The driver, who was headed for the Keystone Sanitary Landfill near Scranton, Pennsylvania, walked away with minor injuries and was charged with two counts of homicide by vehicle and two counts of involuntary manslaughter.

In May 2001, the Pennsylvania Department of Environmental Protection, the Pennsylvania Department of Transportation and the Pennsylvania State Police launched "Operation Clean Sweep"—surprise trash truck inspections at every landfill, major incinerator, and at checkpoints along the Pennsylvania Turnpike and other interstate highways. What this major enforcement action discovered were hundreds of unsafe trash trucks—86% of the trash trucks had safety and environmental violations and more than one-third were taken off the road. Vehicles hauling waste into Pennsylvania were found to have two of six brakes working, cracked frames, and operating overweight by 30,000 to 40,000 pounds. Additionally, operators were arrested for driving while intoxicated and with suspended licenses. This is a clear sign that far too many trash haulers disregard state safety and environmental regulations, which can lead to accidents like the tragedy on Interstate 80 last January.

The practice of shipping municipal solid waste thousands of miles from its source, to be discarded across state and national boundaries, has created an "out of sight, out of mind" culture. Because many communities do not experience the effects of their waste, there is no incentive to implement waste management plans. Efforts to take responsibility for local waste by establishing waste prevention initiatives, recycling programs, and increased landfill and incinerator capacity wane as trash trucks roll out of town. Further, manufacturers lack encouragement to consider the waste management implications of their products. Products continue to be designed and packaged without regard to their volume, toxicity or recyclability.

Mr. Chairman, Pennsylvania and other states have taken responsibility for waste by increasing recycling and landfill capacity and should be rewarded, not punished, for taking this responsibility. We should work to give states the ability to control the importation of waste so we can protect our environment, promote local control, promote waste management initiatives, and protect the health and safety of our constituents. I again thank you for the opportunity to speak before you on an issue that badly needs to be addressed.

Mr. GILLMOR. The gentleman, Mr. Moran.

STATEMENT OF HON. JAMES P. MORAN

Mr. MORAN. Thank you, Mr. Chairman, and thanks for the opportunity to testify in favor of these bills that would regulate solid waste, particularly the Greenwood-Dingell bill. I hope we can move promptly on this legislation that would grant States that authority. While the circumstances in Virginia, Pennsylvania, and other States may be very different, we are in agreement on the absolute need for a Federal remedy. Some States, like the Commonwealth of Pennsylvania, have acted responsibly, planned ahead, permitted landfills to address their residents' long-term solid waste disposal

needs. But, unfortunately, Pennsylvania's prudent efforts to create new waste disposal capacity for its municipalities were undermined by interstate waste haulers who took advantage of the new capacity to ship solid waste into the State. In the case of Pennsylvania, no good deed appears to have gone unpunished.

In the case of Virginia, a different story is emerging. Unlike Pennsylvania, some government officials within Virginia viewed out-of-State as an economic bonanza and encouraged development of these landfills. Since the early 1990's, there has been a cooperative relationship between interstate waste shippers and State and some local officials that is credited with producing seven mega landfills. An eighth is now in operation and a ninth under consideration.

These mega landfills have been built and designed to receive more than 2,000 tons of trash every day. To put these mega landfills in perspective, the one in Sussex County, when completed, will be 550 feet tall, the height of the Washington Monument; it will cover 3 square miles, or the area of roughly 1,000 football fields; it will be the single largest geographic feature on the entire coastal plain of Virginia.

Trash trucks hauling this waste present an additional transportation hazard. In just 5 short years, Virginia doubled the volume of waste it imports. Today, more than 140,000 trash trucks and scores of rail cars haul municipal waste, incinerator ash, and sewage sludge into Virginia each year. Last year, Virginia imported 3,900,000 tons of solid waste, ranking it the second largest solid waste importer. To achieving this ranking waste haulers overwhelmed local roads with trucks, generating noise, dust, and debris 24 hours a day.

Even more troubling, these permits were granted even though the State admits it doesn't have the resources to conduct onsite inspections. A 1998 investigative report of the Washington Post uncovered very troubling findings that showed that the landfills have received medical waste, radioactive material, and industrial solvents and pesticides. Given the large volume of waste and very lax oversight, there is every opportunity for waste haulers to mix household garbage with more toxic or hazardous waste.

In the instance of Virginia, we need Federal legislation to help Virginia pursue a more responsible course. The proposals pending before this committee are appropriate and timely. Unfortunately, in Virginia's case, they don't go far enough. Virginia needs the tools and the authority to revisit existing agreements that were written and approve to specifically accommodate out-of-State trash. I commend my colleague, Congresswoman Davis, for identifying four changes that we need in the legislation.

We need to give a State like Virginia the authority to impose some type of cap on existing facilities. Shockingly, Virginia doesn't impose any time limit on its permits. They don't expire and aren't subject to any renewal process, so they can go on forever. The States should be given some power to regulate host community agreements since the impact of waste brought into a State affects more than just the host community. States should be given much greater flexibility to select the year they establish for the cap. For example, in 1993, that was the year that the highest volume of out-

of-State trash came in. Finally, States should be given the authority to regulate all types of solid waste. A high volume of waste imported into Virginia is municipal sludge that isn't covered by the pending legislation.

There is also growing concern that the financial assurance requirements required by Federal law can be circumvented, and they are not worth the paper they are printed on. Some private landfill operators in Virginia are self-insured, creating an easy loophole that could limit their future liability to cover closure and any long-term maintenance costs. If they are shielded from future costs, they have no incentive to police the waste that they are now receiving.

From an economic perspective, the only way the cost of large volumes of trash traveling such great distances is justified is if the full cost, or really the full liability created by these mega landfills is deferred into the future. As long as disposal remains cheap, safer but more expensive disposal options won't be pursued.

Likewise, these cheap mega landfills undermine local recycling and waste minimization efforts. They have undermined efforts in Northern Virginia, for example, in my district to manage municipal waste through incineration. A diversion of locally generated solid waste from Alexandria and Fairfax incinerators to the big mega landfills that are so much cheaper force the private operator of these incinerators to burn industrial waste to maintain a minimum volume of trash that they needed for the necessary cash-flow. Restricting out-of-State trash would restore the waste volumes of trash these incinerators need to avoid burning industrial waste. Giving the States more power to regulate this waste forces us to confront, not defer, these long-term costs.

There is no easy solution, and States must be responsible partners. But the measures pending before this subcommittee do offer a start on the road to a more comprehensive solution. I congratulate the sponsors of the legislation and urge that we move it along as quickly as possible. Thank you, Mr. Chairman.

[The prepared statement of Hon. James P. Moran follows:]

PREPARED STATEMENT OF HON. JAMES P. MORAN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF VIRGINIA

Mr. Chairman, thank you for the opportunity to testify at today's hearing on "Perspectives on Interstate and International Shipments of Municipal Solid Waste."

I applaud you for conducting this hearing and urge you to move promptly on legislation that would grant states the authority to regulate out-of-state trash. While the circumstances in Virginia, Pennsylvania, and other states may be very different, we are in agreement on the need for a federal remedy. Some states like the Commonwealth of Pennsylvania have acted responsibly, planned ahead, and permitted landfills to address their residents' long-term solid waste disposal needs. Unfortunately, Pennsylvania's prudent efforts to create new waste disposal capacity for its municipalities have been undermined by interstate waste haulers who have taken advantage of this new capacity to ship solid waste into the state. In the case of Pennsylvania, no good deed appears to have gone unpunished.

In the case of Virginia, a different story is emerging. Unlike Pennsylvania, some government officials within Virginia viewed out-of-state trash as an economic bonanza and encouraged development of these landfills. Since the early 1990s, there has been a cooperative relationship between interstate waste shippers and some state and local officials that is credited with producing seven mega-landfills. An eighth is now in operation and a ninth under consideration. These mega-landfills have been built and designed to receive more than 2,000 tons of trash each day. To put these mega-landfills in perspective, the one in Sussex County, when completed will be 550 feet tall, the height of the Washington Monument; cover 3 square miles

or the area of roughly 1,000 football fields; and be the single largest geographic feature on the coastal plain of Virginia.

In five short years between 1993-1998, Virginia doubled the volume of waste it imports. Today more than 140,000 trash trucks and scores of rail cars haul municipal waste, incinerator ash, and sewage sludge into Virginia each year. Last year, Virginia imported 3.9 million tons of solid waste, ranking it the second largest solid waste importer. In achieving this ranking, waste haulers have overwhelmed local roads with trucks, generating noise, dust, and debris 24 hours a day.

Even more troubling, these permits were granted even though the state admits it does not have the resources to conduct on site inspections of all this waste. A 1998 investigative report published in the *Washington Post* uncovered some troubling findings that showed some of these landfills had received medical waste, radioactive material and industrial solvents and pesticides. Given the large volume of waste and lax oversight, there is every opportunity for waste haulers to mix household garbage with more toxic or hazardous waste.

In the instance of Virginia, we need federal legislation to help the Commonwealth pursue a more responsible course. I urge you now to help Virginia by enacting legislation granting states the power to regulate interstate trash. The proposals pending before this committee are both appropriate and timely. Unfortunately, in Virginia's case, they may not go far enough. Virginia needs the tools and the authority to revisit existing agreements that were written and approved to specifically accommodate out-of-state trash. I commend my Virginia colleague, Rep. Jo Ann Davis, for identifying four changes that would address Virginia's unique situation:

1) We need to give Virginia the authority to impose some type of cap on existing facilities. Shockingly, Virginia does not impose any time limit on its permits. They do not expire and are not subject to any renewal process;
2) The states should be given some power to regulate host community agreements since the impact of waste brought into a state affects more than just the host community;
3) States should also be given greater flexibility to select the year they use to establish the base for capping out-of-state waste. Using 1993 as the base year would have little impact on controlling future waste at some of these landfills in Virginia, since one of the mega-landfills in Virginia received its highest volume of out-of-state trash in 1993; and,
4) Finally, states should be granted the authority to regulate all types of solid waste. A high volume of waste imported into Virginia is municipal sludge that is not covered by pending legislation.

Mr. Chairman, accommodating these concerns would be very helpful in addressing Virginia's burgeoning waste management problem.

If we do not give the states the authority and provide Virginia with an opportunity to make amends for is past shortcomings, I fear we will be forced to revisit this issue again in the future. As you know, municipal solid waste landfills across the country are already a growing public policy concern. The environmental threat posed by these local landfills, however, will dwarf those created at mega-landfills given their sheer magnitude in size and volume of waste. Already, preliminary groundwater testing at several of these mega-landfills has found elevated levels of metals raising questions about the reliability of these "high-tech" liners designed to prevent leaks. In addition, there is growing concern that the financial assurancy requirements, required by federal law, may be circumvented and not worth the paper they are printed on. Some private landfill operators in Virginia are self-insured creating an easy loophole that could limit their future liability to cover closure and long-term maintenance costs required. If they are shielded from future costs, they have no incentive to police the waste they now receive.

From an economic perspective, the only way the cost of large volumes of trash traveling such great a distance from its source can be justified is if the full cost, or really the full liability created by these mega-landfills, is deferred into the future. As long as disposal remains cheap, safer but more expensive disposal options will not be pursued. Likewise, cheap mega-landfills undermine local recycling and waste minimization efforts. These cheap landfills have also undermined attempts in Northern Virginia to manage municipal waste through incineration. Diversion of locally-generated solid waste from the Alexandria and Fairfax incinerators to these mega-landfills has forced the private operator of these two incinerators to burn hazardous waste to maintain a minimum volume of trash needed to maintain the cash flow. Restricting out-of-state trash, would restore the waste volumes of trash these incinerators need to avoid burning hazardous wastes.

Giving the states more power to regulate this waste forces us to confront, not defer these long-term costs. There are no easy solutions, and states must be a re-

sponsible partners. But, the measures pending before this subcommittee offer a start on the road to a more comprehensive solution.

Thank you.

Mr. GILLMOR. Thank you, Mr. Moran.

The Minority Whip of the House, Mr. Bonior.

STATEMENT OF HON. DAVID E. BONIOR

Mr. BONIOR. Good morning, Mr. Chairman, and thank you for the opportunity to address you and the committee this morning. I am pleased to be here. I want to commend you and Mr. Pallone for the opportunity to speak, and also to thank Mr. Greenwood and Mr. Doyle and Mr. Dingell for their leadership on this committee.

I am not going to repeat much of what is said, and it was said very well by my colleagues on this panel and others who have spoken before me, particularly the situation in Michigan. Just to recap, I have been working on this issue with many of you now for 10 years. The original case that came before the Supreme Court came out of Fort Gratiot Township in my congressional district. We, as Mr. Greenwood said, back in 1994 were successful in passing a bill we put together in the House. It failed in the U.S. Senate on the last day after we thought it was going to go to the President for his signature. It has become a more serious issue each and every year, and I think the testimony of Mr. Moran and Mr. Kanjorski, we have just heard, shows how out of control this issue has become.

Let me just say this: In Michigan, we have trucks coming over the Ambassador Bridge, which is from Windsor, Ontario into Detroit, and the Blue Water Bridge, which is from Sarnia into Port Huron in my district. Every 5 to 10 minutes, there is a garbage truck that comes across that bridge to dump garbage into our State. Last year alone, over 1.2 million tons of Canadian trash were dumped into Michigan, 80 percent more than the year before. We rank No. 3 in the country for trash imports, with over 2.8 million tons of municipal waste crossing our borders from other States and from Canada.

So we are tired of this. And we are tired of the fact that we have made efforts to control our solid waste disposal in a manner that addresses our environmental concerns in our own State. For instance, we are one of the first States in the Union to establish a deposit on cans and bottles. We did that when I was back in the legislature in 19, I believe 74, if I recall correctly. We have taken action on polychlorinated biphenyls, PCBs. I authored that legislation when I was there back in 1974 that prohibits the sale, manufacture, and use of this chemical. Now we are finding, according to my colleague, Mr. Rogers, that this is coming back into our State via Canada and the trucks that are dumping their garbage into our State. This is not acceptable; we want it changed. We are trying to be responsible in our own community. We hope others would be in theirs.

We need to move on the legislation that is before us today and the others that have been suggested here this morning. And I would hope, Mr. Chairman, that you would proceed in the days and weeks ahead, especially when we return from the recess, to process this legislation so that the full House can express its concern again.

I thank you for the time, and I wish you well. Thank you for your own personal concern on this in Ohio.

[The prepared statement of Hon. David E. Bonior follows:]

PREPARED STATEMENT OF HON. DAVID E. BONIOR, DEMOCRATIC WHIP

I am pleased to be here today with my colleagues and to testify in support of the Solid Waste Interstate Transportation Act, H.R. 1213. I wish to commend Representatives Greenwood, Doyle and Dingell for their leadership on this important issue. I also want to thank Chairman Gillmor and Ranking Member Pallone for holding toady's hearing.

We have been working on this issue for a number of years now, and it is as important to Michigan families today as it was 10 years ago. Our local communities need to have the ability to make their own solid waste disposal decisions. Those of us in Michigan have done a lot to reduce the amount of trash we throw away by establishing community recycling programs. Because we are making responsible solid waste disposal decisions, it is particularly frustrating that we have been forced to accept trash from communities who have been less responsible. Our local governments need to have the ability to ban Canadian and out-of-state waste from their borders.

In order to ensure the authority of local communities to make their own solid waste disposal decisions, the U.S. Congress needs to enact legislation. That is why I am a cosponsor of bipartisan legislation, H.R. 1213, to give our communities the ability to say no to Canadian and out-of-state trash. We should pass this bill this year to stop our communities from becoming a "dumping ground" for those less responsible.

As an example of just how important it is to enact this legislation, let me briefly describe what is currently going on in Michigan. Right now, day after day—every five to ten minutes—there are trucks coming over Michigan bridges from Canada dumping trash into our state. Last year alone, over 1.2 million tons of Canadian trash were dumped in Michigan—80% more than the year before. Michigan also ranks number three in the country for trash imports, with over 2.8 million tons of municipal solid waste crossing our borders from other states and Canada.

All of us in Michigan are tired of driving along our highways and watching garbage fall off of these trash trucks. Even more troubling, earlier this year a Sanilac County man died after being hit by a Canadian garbage truck.This trash trafficking needs to stop once and for all. In 1992, the Supreme Court ruled that trash is commerce and can only be regulated by an act of Congress. This decision was based on the Fort Gratiot case, which is based on a landfill in my district.

Since 1991, I have been working with various members of this Committee to allow local communities to ban out-of-state or Canadian waste. In 1994, we managed to pass our bill in the House only to have it blocked in the Senate in the final days of session.

Now we come before the Environmental and Hazardous Materials Subcommittee again to move forward our bill. Our bill places a presumptive ban on out-of-state and out-of-country waste, and it gives the power to lift the ban to local units of government. It is time for our local communities to have control over the trash being dumped in their backyards.

The Chairman of the House Commerce Committee has said moving our bill is a "high priority" for his committee this year. In the days, weeks and months ahead, I hope to work with the Chairman and Ranking Member John Dingell to see that our bill becomes the law of the land.

Our local communities should not be dumping grounds for other people's trash.

Mr. GILLMOR. Thank you, Mr. Bonior.

The gentlelady from Virginia.

STATEMENT OF HON. JO ANN DAVIS

Ms. DAVIS. Thank you, Mr. Chairman and members of this committee, for holding this hearing today on interstate waste. I assure you it is a very important issue and a worthy topic for the subcommittee to address. I would like to also say thank you to Mr. Greenwood for agreeing to work with me on the possible changes to his legislation to protect the Commonwealth of Virginia.

The importation of interstate waste is a critical issue facing Virginia's citizens, and the issue disproportionately affects the Commonwealth of Virginia. The Fourth Circuit Court of Appeals recently ruled, as has been said today, that Virginia does not have authority to limit the trash crossing its borders. As you know, since waste transportation is deemed interstate commerce, it falls under Congress' authority, and congressional action is needed and can only be done with your help, Mr. Chairman.

Mr. Chairman, this is not a Republican or a Democrat issue; it is a Virginia quality of life issue that transcends party lines. Constituents in my district are tired of dirty trash trucks shedding litter along the sides of the road and clogging routes that were not built for such large vehicle traffic. In the year 2000, Virginia received 3.9 million tons of garbage from outside this State—the second highest amount in the Nation. Being the second largest importer of trash in the Nation is not consistent with our image and vision for Virginia.

As we all know, Congressman Greenwood has introduced H.R. 1213 to address this issue of interstate waste, however adjustments will be required in this bill to ensure that Virginia is not harmed. If Virginia does not benefit from Federal legislation that the other States will, this puts us at a tremendous disadvantage and makes the Commonwealth vulnerable to receiving even more out-of-State waste.

I propose the following changes. First, ensuring that Virginia can impose volume caps on existing landfills. H.R. 1213 currently exempts landfills from State-imposed restrictions if their permits establish a higher limit or do not establish any limit on the amount of out-of-State waste. Most permits in Virginia currently State that landfills can take waste from any source and do not establish any limits. Similarly, H.R. 1213 allows State restrictions to be circumvented if a host community, in its so-called host community agreement with the landfill operators, does not establish any limit on out-of-State waste, or if the future host community agreements authorize specific levels of out-of-State waste. Waste traveling into and through Virginia impacts many more communities than the host community, so State regulation is appropriate under these circumstances.

H.R. 1213 would currently allow States to cap out-of-State trash at 1993 volumes. And as my colleague, Mr. Moran, said, the Charles City landfill received its greatest volume of out-of-State trash in calendar year 1993. Virginia would not be provided much protection by this provision. The bill would be improved by allowing States to choose a calendar year, from 1993 to present, as representing its volume cap so that each State would individually be able to determine which year they wanted to use.

Finally, H.R. 1213 only regulates the flow of municipal solid waste. The bill, I believe, should also include other disposable waste substances, such as sewage sludge or commercial waste. If substances such as sludge are excluded from the bill's coverage, it will only increase the levels that Virginia will receive.

I urge the subcommittee to take up Mr. Greenwood's bill this year, and I just as strongly urge that these recommendations be incorporated into a manager's amendment before H.R. 1213 is

marked up by the committee. Without these necessary changes, the bill will largely be ineffective for Virginia and could possibly even negatively impact our State.

Before I close, I would like to publicly acknowledge the assistance my office has received on this issue from Campaign Virginia, a citizens environmental group dedicated to stemming the flood of out-of-State garbage into Virginia. The transport of interstate waste into Virginia is an issue that we must be able to control, and I urge that the committee address this issue very soon. I thank you again, Mr. Chairman, and appreciate all your help.

[The prepared statement of Hon. Jo Ann Davis follows:]

PREPARED STATEMENT OF HON. JO ANN DAVIS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF VIRGINIA

Mr. Chairman and members of this committee, thank you for holding this hearing today on interstate waste, and I assure you that this is a very important and worthy topic for the subcommittee to address.

The importation of interstate waste is a critical issue facing Virginia's citizens, and the issue disproportionately affects the Commonwealth of Virginia. The Fourth Circuit Court of Appeals recently ruled that Virginia does not have authority to limit the trash crossing its borders. As you know, since waste transportation is deemed interstate commerce it falls under Congress' authority and congressional action is needed.

Mr. Chairman, this is not a Republican or Democrat issue—it is a Virginia quality of life issue that transcends party lines. Constituents in my district are tired of dirty trash trucks shedding litter along the sides of the roads, and clogging routes that were not built for such large vehicle traffic.

In the year 2000, Virginia received 3.9 million tons of garbage from outside the state, the second-highest amount in the nation. Being the second largest importer of trash in the nation is not consistent with my image and vision of Virginia.

As we all know, Congressman Greenwood has introduced H.R. 1213 to address the issue of interstate waste, however, adjustments will be required in this bill to ensure that Virginia is not harmed. If Virginia does not benefit from federal legislation that other states do, this puts us at a tremendous disadvantage and make the Commonwealth vulnerable to receiving even more out-of-state waste. I propose the following changes:

First, ensuring that Virginia can impose volume caps on existing landfills. H.R. 1213 currently exempts landfills from state-imposed restrictions if their permits establish a higher limit or do not establish any limit on the amount of out-of-State waste received at the facility annually. Most permits in Virginia currently state that landfills can take waste from any source and do not establish any limits.

Similarly, H.R. 1213 allows state restrictions to be circumvented if a host community, in its so-called host community agreement with the landfill operators, does not establish any limit on out-of-state waste, or if future host community agreements authorize specific levels of out-of-state waste. Waste traveling into and through Virginia impacts many more communities than the "host" community, so state regulation is appropriate under these circumstances.

H.R. 1213 would currently allow states to cap out-of-state trash at 1993 volumes. The Charles City landfill received its greatest volume of out-of-state trash in calendar year 1993, so Virginia is not provided much protection by this provision. The bill would be improved by allowing states to choose a calendar year from 1993 to the present as representing its volume cap.

Finally, H.R. 1213 only regulates the flow of municipal solid waste. The bill should also include other exportable waste substances such as sewage sludge or commercial waste. If substances such as sludge are excluded from the bill's coverage, it will only increase the levels that Virginia will receive.

I urge the subcommittee to take up Mr. Greenwood's bill this year, and I just as strongly urge that these recommendations be incorporated into a manager's amendment before H.R.1213 is marked up in committee. Without these necessary changes, the bill will be largely ineffective for Virginia, and possibly negatively impact the Commonwealth.

Before I close, I would like to publicly acknowledge the assistance my office has received on this issue from Campaign Virginia, a citizens' environmental group dedicated to stemming the flood of out-of-state garbage into Virginia. The transport of

interstate waste into Virginia is an issue that we must be able to control, and I urge that the subcommittee address this issue very soon.

Mr. GILLMOR. Thank you very much. Are there any questions of the panel? If there are no questions, I want to thank our——

Mr. GREENWOOD. Mr. Chairman——

Mr. GILLMOR. Yes.

Mr. GREENWOOD. [continuing] just a statement.

Mr. GILLMOR. Mr. Greenwood.

Mr. GREENWOOD. Thank you all for your really excellent statements. It occurred to me, listening to Mr. Moran's testimony, that some observers from a faraway star system could someday see these great eight landfill pyramids in Virginia and conclude that there is no intelligent life on Earth.

Mr. MORAN. And they might be right sometimes, but thank you for that observation, Mr. Greenwood.

Mr. GILLMOR. Once again, I want to thank the panel, and we hope to see some activity here in the future that would be to your liking.

At this point, we will dismiss panel and call up panel two. Members of this panel are Chris Jones, director of the Ohio Environmental Protection Agency; Russell Harding, director of the Michigan Department of Environmental Quality; David Hess, secretary of Pennsylvania's Department of Environmental Protection; Lori Kaplan, commissioner for the Indiana Department of Environmental Management, and Joseph Lhota, deputy mayor of New York City.

And as the panel takes their places, I want to make special mention of Chris Jones, who back a long time ago, when I was president of the Ohio senate, was one of our crackerjack staffers, did a great job there, and has now risen to the position of director of EPA, and I want to welcome you particularly. And I want to call on Mr. Greenwood.

Mr. GREENWOOD. Thank you, Mr. Chairman. An issue that I have been working on almost as long as this one is juvenile justice authorization, and it is being marked up in a few minutes in the Education Committee, so I am going to have to, unfortunately, leave for a bit. And I thank the chairman for indulging me by having me have the honor of introducing the Honorable David Hess, who I referenced in my statement, and now heads the Pennsylvania Department of Environmental Protection. David and I are old friends from way, way back when he was a staffer in the State senate. I think Senator Santorum was a staffer in the State senate at the same time. And so our staffers climb to great heights in short periods of time.

But I welcome David, congratulate you on your appointment and look forward to your testimony. And I apologize to the rest of the panelists that after Mr. Hess' testimony I am going to have to depart for a little bit. Thank you, Mr. Chairman.

Mr. GILLMOR. I want to thank all the panelists for being here. We do have copies of your testimony, and each of you have 5 minutes to summarize your testimony before we begin with questions.

Mr. Hess.

STATEMENTS OF DAVID E. HESS, SECRETARY, DEPARTMENT OF ENVIRONMENTAL PROTECTION, STATE OF PENNSYLVANIA; CHRISTOPHER JONES, DIRECTOR, ENVIRONMENTAL PROTECTION AGENCY, STATE OF OHIO; RUSSELL J. HARDING, DIRECTOR, DEPARTMENT OF ENVIRONMENTAL QUALITY, STATE OF MICHIGAN; LORI KAPLAN, COMMISSIONER, DEPARTMENT OF ENVIRONMENTAL MANAGEMENT, STATE OF INDIANA; AND JOSEPH J. LHOTA, DEPUTY MAYOR, CITY OF NEW YORK

Mr. HESS. Chairman Gillmor, thank you very much, members of the committee. My name is David Hess. I am secretary of the Department of Environmental Protection. And courtesy of the great introduction Congressman Greenwood gave me, I think I will ask for a raise when I get back to Harrisburg.

It is a pleasure to be here on behalf of Governor Tom Ridge and also members of our general assembly. We have a very simple message, and that is, "Don't dump on Pennsylvania." We need Federal legislation now that gives the right to decide if they want to accept garbage from other States for disposal. I think the issue is very simple, and several members touched on it in their opening statements. The Supreme Court says communities don't have the right to decide whether they want out-of-State garbage or not. They said Congress could give them that right, and that is why we are here.

We very much appreciate the efforts of Chairman Gillmor and Ranking Member Pallone for scheduling this hearing and for the work that Congressman Greenwood has done and Senator Specter and Senator Santorum and our entire delegation on this issue. As many of you know, Governor Tom Ridge has been very active in lobbying Congress, including members of this committee on this issue, as was the late Governor Robert P. Casey before him.

In each of the last three legislative sessions, our general assembly passed resolutions urging Congress to act on this issue, and I am very pleased today to be able to introduce Pat Henderson, who is from Senator Mary Jo White's office, and also Richard Fox, who is from Senator Musto's office, both representing the Senate Environmental Resources Committee here today.

What we would like in Federal legislation, again, is I think very simple. We would like the ability of communities, again, with all due respect to the congressman from Fresh Kills, to decide their own fate. We would like a freeze on waste imports and to ratchet down the amount of waste that can be accepted by landfills. And I think Congressman Greenwood's bill, also a bill introduced by Senator Specter, incorporates the provisions that Pennsylvania supports.

These tools are needed because some States have found it easier to dump on their neighbors than to develop their own disposal facilities. And as, again, other speakers have said, Pennsylvania included, is a really a victim of our success in the area of waste management and recycling. And I think, ironically, on one issue, a lack of Federal legislation has also hampered the ability of some States like New Jersey to keep waste in their own State, because they have waste facilities they need to maintain.

The simple tools we are asking for will enable States and communities to act responsibly to manage their own waste. As was

mentioned before, Fresh Kills Landfill is closing. Eleven thousand five hundred tons of trash is trying to find a home in the States of Pennsylvania, New Jersey, and Virginia.

In May of this year, DEP, the Pennsylvania State Police, and other agencies conducted an unprecedented operation to inspect trash trucks in Pennsylvania, called Operation Clean Sweep. We conducted over 40,000 inspections over an 8-day period in Pennsylvania at every single landfill. What we found, in a word, was frightening. Eighty-six percent of those trucks had safety violations. The State police pulled 849 trucks off the highway as unsafe or pulled the drivers out of their cabs because they had DUI violations or CDL licenses that were expired. These hazards are real to our communities, and we are doing all we can to deal with them in Pennsylvania, but, frankly, we need to get to the root of the problem. And the root of the problem is adequate Federal legislation to deal with this issue.

Right now in Pennsylvania, we have 25 applications pending for new or expanded landfills. That is 71 million tons of capacity. If that was devoted only to waste from Pennsylvania, that would last us more than 7 years on top of the already 12 years worth of capacity we have right now. We clearly have an overcapacity of waste disposal facilities in Pennsylvania.

Our democracy is built on the foundation of empowering people to make choices. It is also built on fairness. Our communities now have no voice in deciding whether millions of tons of garbage come to them for disposal from other States. It is unfair, again, for States like Pennsylvania to shoulder this burden. We are not asking to build a fence around our borders. In fact, we did a survey in 1999 that showed that 22 percent of the communities that have landfills right now would accept out-of-State waste. That is not what we are asking. We are not asking to turn back waste trucks. All we are doing is asking for the freedom to make a choice, and we are not even asking Congress for any money.

Again, we appreciate the opportunity, and, again, Mr. Chairman, we appreciate the fact that you set up the hearing today. This is a critical issue for us, and we hope that the committee acts shortly on this issue. Thank you.

[The prepared statement of David E. Hess follows:]

PREPARED STATEMENT OF DAVID E. HESS, SECRETARY, PENNSYLVANIA DEPARTMENT OF ENVIRONMENTAL PROTECTION

Chairman Gillmor, members of the Committee, my name is David Hess and I am the Secretary of Pennsylvania's Department of Environmental Protection.

I am here today on behalf of Gov. Tom Ridge and members of the Pennsylvania General Assembly to give you one simple message—Don't dump on Pennsylvania.

We need federal legislation now giving communities the right to decide if they want to accept garbage from other states for disposal.

The issue is simple—the U.S. Supreme Court says communities don't have the right to decide whether they want out-of-state garbage or not. They said only Congress can grant that right and that's why we're here.

We very much appreciate the efforts of Chairman Gillmor and Ranking Member Mr. Pallone for scheduling this hearing and that of Congressman Greenwood and Senators Specter and Santorum and our entire Congressional Delegation for their continuing efforts to push for federal legislation in this area.

Over the last six years Gov. Ridge has personally visited many members of Congress, including members of this Committee, to urge passage of interstate waste legislation. And before him, the late Gov. Robert P. Casey carried the same message.

My predecessor James Seif appeared before this very committee two years ago asking for your action and met with many members to educate them on this issue.

In each of the last three legislative sessions, members of our General Assembly have overwhelmingly passed resolutions urging Congress to act on interstate waste legislation.

Today I'd like to recognize the presence of Richard Fox representing Sen. Ray Musto, Democratic Chairman of our Senate Environmental Resources and Energy Committee and Patrick Henderson, representing Sen. Mary Jo White, the Majority Chairman of the Committee.

We Pennsylvanians are nothing if not persistent, because we believe passing legislation giving states and communities a voice on waste imports is the right thing to do.

Specifically, Pennsylvania is seeking federal legislation on interstate waste that includes these basic provisions:

1. Giving communities the ability to allow the disposal of imported waste through host community agreements, which would address concerns like operating hours, truck traffic, noise, and litter before permits are issued;
2. Imposing a freeze on waste imports immediately with a predictable schedule for reducing imports over time;
3. Allowing states to impose a percentage cap on the amount of imported waste that a new facility could receive;
4. Allowing states to consider in-state capacity as part of the permitting process;
5. Allowing communities to adopt waste flow control ordinances to protect existing bond debt.

Bills introduced by Congressman Greenwood—H.R.1213 and Senator Specter—S. 1194—incorporate provisions that Pennsylvania supports.

These tools are needed because some states have found it easier to dump on their neighbors than to develop disposal facilities and recycling programs to handle the waste they generate.

In many ways, Pennsylvania has been a victim of our own success.

Pennsylvania has required our counties to plan for how they will dispose of the waste they generate over the next ten years, put in place the nation's toughest environmental standards for landfills and built the largest curbside recycling program in the country.

Because Pennsylvania has successfully built a waste disposal and recycling system, other states feel they can come in and take advantage of it, and there's nothing to stop them.

Ironically, the lack of federal legislation has also hampered other states, like New Jersey, who do want to keep waste in their state, but can't because they can't control where their waste goes for disposal.

Reasonable restrictions on imported waste shipments like the ones we're asking for will not ban all imports as some have said. In fact, in 1999 Pennsylvania did a survey of communities hosting landfills and found that 20% have, and would, agree to accept waste imports for a variety of reasons.

The simple tools we are asking for will enable states and communities to act responsibly to manage their own waste and limit unwanted waste imports from other states.

The need for federal legislation is now more urgent.

In March, Fresh Kills Landfill serving New York City closed—forcing the city to find new disposal sites for an additional 4.7 million tons of garbage a year. They are shipping 11,500 tons of trash a day outside the city to landfills and incinerators in Pennsylvania, New Jersey, and Virginia.

Much of this garbage moves by truck along our Interstate highways causing serious safety and environmental problems for the states involved.

In May of this year, Pennsylvania conducted "Operation Clean Sweep," an unprecedented effort to put State Police and environmental inspectors at each of the landfills and resource recovery facilities in the Commonwealth over an eight-day period.

The results we found were, in a word, frightening.

We inspected more than 40,000 trucks and cited waste haulers for over 11,000 safety and environmental violations.

The Pennsylvania State Police found 86 percent of the trucks they inspected had one or more safety violations and they took 849 trucks or drivers out of service for being unsafe.

One driver showed up at 6:00 a.m. on a Monday morning drunk.

We've also had citizens killed and seriously injured by trash trucks, most recently in Northumberland County along I-78.

As the fines and penalties from "Operation Clean Sweep" continue to pile up, we also continued our regular truck inspections. As recently as last week, six more inspection sites resulted in more violations.

The hazards of unsafe trash trucks are real for our communities and we're doing everything we can to enforce our safety and environmental laws, but frankly we need to get to the root of the problem that only federal legislation can solve.

We are also doing all we can within the current law to improve our waste management programs.

Gov. Ridge issued an executive order that directs DEP to actively involve communities early in landfill permit decisions, and to take a detailed look at truck traffic and other community impacts.

We also passed new regulations requiring applicants for new landfill capacity to prove the potential benefits of those facilities out weigh harms to the environment and to the community.

Landfill applicants are also prohibited from applying for new landfill capacity until they have five years or fewer of capacity left.

Gov. Ridge is the first governor to propose legislation that includes a two-year moratorium on issuing permits for new or expanded landfills, new tools to crack down on unsafe trash trucks and giving communities more say in resolving local issues with landfills through host community agreements.

But Pennsylvania cannot address the issue of waste imports without federal legislation.

In our offices, we have 25 applications for new or expanded landfills that will add 71.5 million more tons and years of new waste disposal capacity in Pennsylvania.

If the additional capacity were devoted only to the waste Pennsylvania generates, it would last us 7.24 years. This is on top of the 12 years of capacity we have right now.

Our democracy is built on the foundation of empowering people to make choices. It is also built on fairness.

Our communities now have no voice in deciding whether millions of tons of garbage come to them for disposal from other states.

In it is unfair that states like Pennsylvania that have made the hard choices to build waste facilities and recycling programs, have to make room for other states that have not.

We are not asking to build a fence around our borders to turn back every waste truck or to turn our backs on the legitimate needs of our neighbors.

We're not asking for any money.

We are asking Congress to give states and communities a voice so we can limit unwanted garbage imports into our state. With appropriate federal legislation, states will be provided the tools needed to begin addressing the current inequities.

Again, thank you for an opportunity to address this critical issue.

We look forward to working with Congress to address this important issue and to developing a consensus that will benefit all states and communities.

Mr. GILLMOR. Thank you, Mr. Hess. Because Mr. Greenwood has to depart, we will divert from our normal order of procedure, and permit Mr. Greenwood to question Mr. Hess.

Mr. GREENWOOD. I don't know if you have had a chance, David, to look at some of the issues that Virginia has asked us to take a look at, but do you see any difficulty in making—if you have; if you haven't, that is fine; we can talk about it later—but if you have had an opportunity to look at those issues, do you see any difficulty incorporating the concerns a State like Virginia has with my legislation that would pose additional problems for Pennsylvania?

Mr. HESS. I think in terms of having a little flexibility to choose the date, I think that probably would be a good addition. Flexibility is always important, so I think on that particular issue I think that would probably strengthen the bill.

Mr. GREENWOOD. And I will be brief. Mr. Fossella is not with us here, but one of the points that he made is that these municipalities in Pennsylvania have a choice. They can either accept this waste from a State like his or not. Perhaps you could just describe for the other members of the committee here what that really

means in a place like, for instance, where I come from, in a place like little Tullytown Burrow can accept waste, but the trucks cross many municipal boundaries and drive through many townships and create dust and pollution and noise and all of the rest. And the smell, the air quality issues certainly are not isolated. The water quality issues are not isolated to a particular municipality. So I think we need to debunk this notion that somehow no one is harmed if the residents of one little tiny municipality want to receive trash from out of State.

Mr. HESS. I think there is two points I would make very quickly. One point is the agreements they are talking about are not agreements between, say, a New York City and Old Forge Burrow in northeast Pennsylvania. They are with a waste management company and a community. And in many cases, those kinds of agreements were made years and years and years ago, at least in Pennsylvania's case, and they really have no opportunity to either update or change those agreements. So they have been effectively locked in. And that is really one point.

I think the second point is, as you mentioned, there are impacts that go beyond the host community itself, and Pennsylvania, again, as Congressman Kanjorski said, we have 2,600 municipalities, some of them very tiny, and it can be that certainly there are agreements. And as I said before, 22 percent of those folks surveyed, those communities surveyed, would accept waste. But now they are not given a choice, either because they have old agreements that they can't now change or they weren't party to some of these agreements in the first place.

Mr. GREENWOOD. Thank you, Mr. Chairman. In the interest of time, I will yield back.

Mr. GILLMOR. Thank you.

Director Jones from Ohio.

STATEMENT OF CHRISTOPHER JONES

Mr. JONES. Thank you, Mr. Chairman. And it was a lot easier, I am sure David would agree, to be a staff person than to be the head of the agency, but I, too, want to thank you for having these hearings and to Congressman Greenwood for his efforts on behalf of this legislation. And I will have a more detailed statement for the record.

I want to talk about Ohio's experience, because I watch Pennsylvania, and am reminded that statement earlier today, "No good deed going unpunished." As you know, we have some experience in Ohio. Between 1986 and 1989, out-of-State waste disposed in Ohio increased from about 33,000 tons a year, which was less than 1 percent of our total disposal, to 3.7 million tons, which was 20 percent of our total disposal. We have decreased significantly from the 1989 levels, but as you mentioned, Mr. Chairman, you were the president of the senate at the time, we passed a very progressive bill, house bill 592 in Ohio, and we took a proactive step. We set up responsible management of waste disposal in Ohio. We assured ourselves at the time we had less than 9 years of capacity. We now have over 20 years of capacity. We haven't sat still in the 13 years since that bill passed. We have amended 18 times to take account to the changing circumstances.

There are issues that cause us to need this legislation. The discussion earlier about the level playing ground, there isn't one. We have no ability, we have no authority to control the imports. We, in Ohio, have done I think a very good job of regulating landfills, of managing solid waste disposal, of establishing recycling goals, aggressive recycling goals that are being met throughout the State. We have a statewide management plan that people have to conform to. So we have taken those steps, the fundamental purpose of which is to support our own solid waste management system in the State of Ohio.

Part of that includes both exports and imports, and I would like to echo what David said. This is not about putting up a fence, but this is about giving the States the ability to responsibly manage imports and exports of solid waste. We are having problems in Ohio, because people perceive that these landfills are being built for the sole purpose of servicing out-of-State waste. And that takes the decisionmaking out of the thoughtful, engineered management decisions and into the emotion, and it is very difficult to argue with that emotion, because it is based on fundamental facts that those people live with on a daily basis.

Why do we look to this legislation and the need for this legislation? As I said, we have been proactive, and we have managed well. We think we have, actually, more than twice the permitted landfill capacity that Pennsylvania and Virginia have, and we have tried to compare—we have 1999 numbers for Ohio but 1997 for the other States. But we have permitted 453 million tons of capacity for municipal solid waste in Ohio compared to about 200 million tons for Pennsylvania and Virginia. The possibly more significant fact is that the two landfills in Ohio that take the most out-of-State waste currently have enough remaining capacity between them for around 65 million tons of waste. We have relatively low tipping fees. According to the best data we have, and this is a spot fee so there is probably contract prices lower, our tipping fee is at least $9 lower than Virginia's and $19 lower than Pennsylvania.

What we have to look at is the total cost to dispose of waste in Ohio, which is a function of both our tipping fees and the transportation costs. And good for us but bad for us, Northeast Ohio is served by a number of high quality east-west interstate highways. They provide relatively direct access from the east coast, and we have seen disposal from at least 11 different east coast States, so it is clear to us that transportation costs are not going to prohibit—are not going to be cost prohibitive for people to import waste.

Right now, the level of waste imports into Ohio are not a concern. Well, they are not an immediate concern. But because of our capacity, which is currently, on the current levels, 21 years, and the relatively low tipping fees, our proximity to the east coast, and our experience, going from less than 1 percent of our total disposal to over 20 percent of our disposal being imports in 2 years, we remain concerned that we are vulnerable to the good fortune that Pennsylvania has enjoyed. There were proactive, they planned, they are paying a price. We don't want to pay that price, and we are concerned that we don't have the tools. This legislation gives us those tools.

I want to thank the chairman for the hearing and Mr. Greenwood for his legislation.

[The prepared statement of Christopher Jones follows:]

PREPARED STATEMENT OF CHRISTOPHER JONES, DIRECTOR, OHIO EPA

Good morning, Mr. Chairman, and members of the committee. My name is Chris Jones and I am Director of the Ohio Environmental Protection Agency (Ohio EPA). I appreciate the opportunity to be with you this morning to provide you with an overview and historical perspective of the interstate waste issue from Ohio's vantage point. I would also like to speak to several provisions of H.R. 1213 sponsored by Congressman Greenwood and others, that would provide Ohio with many of the tools we need to help us address the interstate waste issue in the future.

As we all know, the transportation and disposal of solid waste across state lines has been a controversial issue for over a decade, and Ohio has not been spared the controversy. The receipt of waste shipments from outside of Ohio first became a serious concern to the State during the late 1980's, when over a short period of time waste imports increased dramatically. From 1986 to 1989, out-of-state waste disposed in Ohio increased from approximately 33,000 tons, representing less than 1% of total disposal, to 3,700,000 tons, representing 20% of the total disposal. Although waste imports have decreased significantly from the 1989 levels, we have seen increases in the last four years and continue to be aware of the possibility of increased waste receipts from other states at any time. We would note the following reasons for our concern over out-of-state waste:

- With the passage of Ohio's comprehensive solid waste law, H.B. 592, in 1988, Ohio took a proactive step to responsibly manage Ohio's waste by assuring in-state disposal capacity, at state of the art facilities, for solid waste generated in Ohio, and setting state recycling goals. It is only fair that other states take the steps necessary to responsibly manage their own waste, instead of relying on exporting their waste outside of their borders.
- It is difficult or impossible for state and local inspectors to verify that hazardous or untreated infectious waste has not been included in solid waste shipments that are shredded or heavily compacted before being shipped long distances.
- Citizen opposition to landfills that are perceived as servicing primarily out-of-state waste hinders the siting of facilities needed to provide disposal capacity for Ohio's waste.
- Citizens are reluctant to reduce or recycle waste when they believe their efforts will only serve to make room for trash from other states.

RECENT OUT-OF-STATE WASTE RECEIPTS AND TRENDS

In 1999 (most recent complete data available), Ohio received 1.5 million tons of out-of-state waste, representing about 7% of total waste disposed. This is a slight increase from the previous three years, when imports have ranged from 1.2 to 1.5 million tons, representing 6 to 7% of total disposal. Although we don't have Ohio's export data yet for 2000, we know that waste imports increased again last year, up to approximately 1.8 million tons, making this the fourth year in a row that imports have increased.

Ohio imported the largest amount of waste from New York in 1999, at 476,046 tons (31% of the total), while 380,785 tons were received from Pennsylvania (25% of the total), and 149,810 tons were received from New Jersey (10% of the total). Over the last five years, imports from these three states have accounted for 65% to 74% of the total amount of out-of-state disposal in Ohio. New York and Pennsylvania have been the top two states exporting waste to Ohio over this period of time.

In 1997, Ohio EPA performed a detailed analysis of the origin of out-of-state waste disposed in Ohio, yielding interesting results. For purposes of reporting, Ohio EPA has generally considered waste originating from contiguous states and the western two-thirds of Pennsylvania to be "short-haul", and waste originating from the eastern one-third of Pennsylvania and non-contiguous states to be "long haul." Using these definitions, 59% of out-of-state waste received in 1997 would be considered long-haul. And virtually all of Pennsylvania's waste would be considered short-haul.

A more detailed examination of out-of-state waste just from New York is also interesting. Out of the total of 469,869 tons of waste received from New York, fully 333,607 tons (71%) was received from the New York City area. The tonnage received from New York City also accounted for 24% of all out-of-state waste disposed in Ohio in 1997, the single largest source of out-of-state waste in Ohio. This total could be even higher, since we don't know the exact origin of a significant amount of

waste coming from New York. In other words, an additional 135,869 tons of waste which we know came from "other New York sources" represents both waste from identified places outside of New York City, and waste from New York for which the county of origin was not specified.

LANDFILLS RECEIVING OUT-OF-STATE WASTE

Over the past several years, the vast majority of waste imports have been received by two landfills: BFI Carbon Limestone in Mahoning County, and AWS American Landfill in Stark County. In 1999, Carbon Limestone received 49% of the out-of-state waste disposed in Ohio. American Landfill received 16% of the out-of-state waste disposed in Ohio. These two landfills also received the largest amount of long-haul waste in the state. Based on previous years data, we would expect that these two facilities received at least 90% of all long-haul waste.

OHIO WASTE EXPORTS

It should also be noted that Ohio has exported significant amounts of waste over the last several years. In 1999, Ohio exported 1,039,876 tons of waste making Ohio a net importer of 485,769 tons of waste. 1999 is the first year that Ohio has recorded waste exports of over one million tons. Ohio waste exports have actually been on the rise over the last several years, increasing from an estimated 270,000 tons in 1992.

However, I would note that these export increases should be viewed with some caution. Until recently, it was difficult or impossible to get accurate data from adjacent states regarding receipt of waste from Ohio. Therefore, it is difficult to tell whether the increases in Ohio exports is due to an actual increase in exports or simply better access to data. In general, the export numbers we have been able to obtain indicate that most of Ohio's exports, approximately 65% or more, go to Michigan and Kentucky.

OHIO'S VULNERABILITY TO OUT-OF-STATE WASTE

Several factors contribute to Ohio's vulnerability to out-of-state waste. The factor that brought this issue once again to the forefront is the closure of New York City's Fresh Kills Landfill which handled 3.5 million tons of garbage annually. Historic waste flow patterns would indicate that Virginia, Pennsylvania, and Ohio would eventually be the most likely recipients of this waste. Despite Virginia and Pennsylvania's higher overall import levels than Ohio's, and Pennsylvania's closer proximity to New York, there are at least three reasons why Ohio appears to be vulnerable to increased receipts of waste from New York City waste as well.

First, we believe Ohio has more permitted landfill capacity than Pennsylvania or Virginia at the present time. In 1999 Ohio had around 453 million tons of permitted municipal waste landfill capacity, whereas Pennsylvania and Virginia both reported around 200 million tons of capacity (based on the "Mid-Atlantic States Municipal Waste Matrix" published in 1999). For Ohio, this equates to about 22 years of capacity at current disposal rates. If all pending landfill permit applications are ultimately approved, Ohio could have over 30 years of capacity.

More important than capacity, in our estimation, are Ohio's relatively low tipping fees. According to the best data available, Ohio's average tipping fee appears to be at least nine dollars per ton lower than Virginia, and nineteen dollars lower than Pennsylvania (based on the "Mid-Atlantic States Municipal Waste Matrix" published in 1999).

	New York	Pennsylvania	Virginia	Ohio
Average Tipping Fee	$60.00	$49.00	$39.00	$29.50

This information should be considered with several qualifications. First, although New York, Pennsylvania and Virginia have reported this information, the source of their information is unclear. We do not know whether this is a calculated average, or an educated guess on their part. Second, although Ohio's average is calculated from information provided by landfills to Ohio EPA, the tipping fee reported to us is the posted "spot rate," which will be higher than what would be negotiated for in a contract. Our estimation of the average "contract" tipping fee in Ohio would be closer to $20.00 a ton.

Finally, Ohio's vulnerability to out-of-state waste is dependant on the total cost to dispose of waste in Ohio, which is a function of both Ohio's tipping fees and the cost to transport the waste into the State. Unfortunately, we have no specific data to help us understand transportation costs at this time. However, we can make cer-

tain observations. First, northeast Ohio is serviced by a number of high-quality, east-west interstate highways, providing relatively direct routes from the east coast into the State. Second, as we observe the receipt of waste from at least eleven different east coast states, it is clear that transportation of waste into Ohio from the eastern U.S. is not cost prohibitive. The important point is that the flow of waste is dependent on a combination of both tipping fees *and* transportation costs. Transportation costs are dependent, at least in part, on roads that are adequate to handle waste-hauling truck traffic, as opposed to "as the crow flies" distances between the origin of waste and the nearest available landfill.

OHIO EPA'S POSITION ON PROVISIONS OF H.B. 1213

Although current levels of waste imports into Ohio are not an immediate concern, due to our permitted capacity which will currently last over 21 years, relatively low tipping fees, and proximity to the east coast, Ohio remains vulnerable to increases in the future. Accordingly, we strongly support mechanisms to protect the State from unreasonable future increases in out-of-state waste. From our perspective, this is the most important of all the out-of-state waste issues and one which we believe is addressed through the provisions of H.R. 1213. I would like to briefly discuss our thoughts on some of the concepts contained in H.R. 1213.

Presumptive Ban

We believe our goal of having the ability to control future increases in out-of-state waste will be met in large part by the presumptive ban that prohibits the receipt of out-of-state municipal solid waste at all *existing* facilities unless they meet one of the a number of criteria, including "host community agreements," new or existing.

We support the exceptions to the ban as outlined in the bill. We would note, however, that the term "host community agreement" is defined in such a way that in Ohio, it will apply only to agreements between facilities and solid waste management districts. It will *not* apply to agreements between facilities and local municipal or township governments, which is what we would commonly consider to be a "host community agreement". The result, for Ohio, is that SWMDs will have clear and exclusive authority to allow receipt of out-of-state waste via host community agreements.

Freeze Authority

This provision allows a state to freeze the level of out-of-state waste received at a solid waste landfill or incinerator at 1993 levels. Twenty landfills received out-of-state waste in 1993, and fifteen of them are still open.

Permit Caps

This provision allows a state to pass a law setting a percentage limit on the amount of out-of-state waste that new facilities or expanded facilities could receive. Limitation would apply to all new or expanded facilities, and the limit could be no lower than 20%. This is another option to the states which we believe could prove to be helpful to Ohio in the future, though not to a great extent at this time.

Cost-Recovery Surcharge on Out-of-State Waste

HR 1213 allows states to impose a $2.00 per ton surcharge on out-of-state waste to recover costs incurred associated with the processing or disposal of out-of-state waste. While utilizing this provision seems appealing, I cannot tell you today that Ohio will take advantage of this funding option. As Ohio currently assesses a state fee of $1.75 per ton to all waste, not just out-of-state waste, I would not expect that we would be able to justify an additional $2.00/ton for waste coming from other states, especially our border states.

Annual Report

The legislation requires that the owner/operator of each landfill receiving out of state waste shall submit a report to the appropriate Governor indicating the amount of out of state waste that that facility received during that year. Ideally, Ohio would like to see an additional requirement included in this bill for waste haulers to accurately report to receiving facilities the state and county of origin and the type of waste (i.e. C&DD, MSW, industrial) being disposed. Such a requirement would then extend to the facilities to accurately record the same information and include that in the report to the Governor as well.

In closing, I would like to applaud the efforts of Congressman Greenwood for his steadfast efforts to develop legislation to assist those states who are feeling the threat of increased out-of-state waste shipments. Speaking only for Ohio, HR 1213 will provide our state with the tools we need to help protect us in the future against what we perceive to be a strong potential for increased shipments of long-haul out

of state waste across our borders. I would also like to thank Congressman Gillmor, hailing from Ohio, for holding hearings on this issue and for inviting me to participate today. Again, I appreciate the opportunity to testify on this issue and would be happy to provide any additional information the committee may need as you continue to deliberate this important issue.

Mr. GILLMOR. Mr. Harding.

STATEMENT OF RUSSELL J. HARDING

Mr. HARDING. Well, thank you, Mr. Chairman. Indeed, it is a pleasure to be here, and members of the committee, to talk about an issue that is absolutely vital to Michigan: The importation and export of solid waste.

As you know, in Michigan, we are a steward of a natural resource of nearly 20 percent of the world's fresh water and the Great Lakes that surround our State. Consequently, we have enacted very tough landfill standards in our State, some of the most restrictive in the country. In terms of technology requirements, we also have a very comprehensive planning statute that requires each county to provide for 15 years of capacity. Those plans must be reviewed and approved by my agency according to State statute. They are tough requirements. We have done that in our State to ensure that we can manage this issue satisfactorily within the State.

Our concern hasn't been as much export and import from the surrounding States. That is certainly, I think, as Chris just mentioned, a concern. We are very concerned, though, of what is happening versus Canada and our State in terms of this issue. This really caught by great surprise. We visited extensively with Toronto and Canadian officials. They have admitted to us that it would be cheaper to dispose of their solid waste in Canada, but they have decided instead, for political expediency, to send it to Michigan. And now the 19 million tons that we take care of in Michigan annually, 1.5 of that is from Canada alone. The other landfills will be closing in Canada. We expect that will increase dramatically, as I think was mentioned by a member of the prior panel. There certainly is no land shortage in Canada, but they do not want to deal with this issue.

We have seen the increase is now about 20 percent of all the solid waste we are dealing with, as I said, comes from other States and Canada. We are diligent—a point I wanted to hit on a little bit, I think it is been talked about, is we are very diligent on attempting to inspect those trucks as they come either through Detroit or Port Huron, across the bridges into our State. That is a very, very logistically difficult task to undertake. And we have used sophisticated means. The logistics of it are very difficult. We certainly can't restrict traffic and cause backups at the border, the international borders. We also inspect at landfills. But it is very, very difficult to do that, and we find when we do the inspections that we, indeed, have at times what we consider to be hazardous materials, even radioactive materials mixed in. We have no ability to do a whole lot about that except try to turn the truck back at that point, and that becomes a problem in itself.

We also are experiencing about 65 trucks per day from Toronto alone. It is estimated that we have about 130 a day from Canada. As we struggle—and I know this committee has been concerned

and working on energy issues—as we struggle with clean air issues, this has a big impact on our State. These things are important, and we try to deal with them regionally and across the country.

I have heard discussed a little bit individual community host agreements with companies, and I agree with Mr. Hess. That I believe is a statewide issue. We certainly allow that. That is between individual host communities and landfill—or excuse me, in waste companies. We don't think that should be prohibited, but we do think it needs to be restricted to reflect statewide concerns. Trash move between counties, it moves throughout the State. There are a number of issues that have an impact that go way beyond local.

The Governor has been very concerned and working on this with Congress since 1992. I know it has been covered adequately that certainly the State has come to the conclusion that we do not have the authority in our State to address this issue. It will take active legislation to be passed by Congress to deal with it. In the Engler administration, the State of Michigan, we support open markets. I certainly agree with our colleagues from New York. I think open markets work. They should be supported. We are only advocating some compromise here.

We are not saying that we believe we ought to restrict and put up barriers at the State lines. We don't think that is appropriate. Michigan exports waste; we export more hazardous waste than we import. We think it is important that free flow of commerce continue, but I believe Mr. Greenwood has a very good start here on a solution that indeed is a compromise. It allows these things to occur, allows free commerce to occur. But it does set some standards that allow States to address some of the key components.

And I can tell you from a political standpoint in our State, our citizens just cannot understand why Congress hasn't resolved this issue. They see Congress dealing with a whole array of issues across a spectrum that affects citizens' lives every day, but yet this issue doesn't seem to be able to be dealt with. It is causing increased consternation in our State. We continually see our State legislature attempting to pass legislation that we know does not pass legal muster. We have not supported that legislation. We have done tough thing politically. Governor Engler hasn't supported legislation he knows that is unconstitutional.

So I guess our plea, again, is we really need your help. We appreciate Representative Mike Rogers taking the leadership from our State on this issue. We really need some help from Congress here. We are just asking for some compromise legislation, and we stand willing to work with our partners from the Northeast to secure that. Thank you.

[The prepared statement of Russell J. Harding follows:]

PREPARED STATEMENT OF RUSSELL J. HARDING, MICHIGAN DEPARTMENT OF ENVIRONMENTAL QUALITY

Good afternoon, I am Russell J. Harding, Director of the Michigan Department of Environmental Quality. The Department is Michigan's environmental regulatory agency, responsible for the air, water quality, wetlands, waste management, and environmental cleanup programs.

I would like to thank the committee for the opportunity today to discuss legislation that would be effective for managing the interstate transfer of solid waste. In 1992, the United States Supreme Court ruled, in the matter of *Fort Gratiot Sanitary*

Landfill v. Michigan Department of Natural Resources et al. (1992 Fort Gratiot decision), that provisions of Michigan's Solid Waste Management Act, which allowed counties to impose restrictions on the importation of solid waste from other states and countries through their Solid Waste Management Plans, violated the United States Constitution and were not enforceable. The United States Constitution's Commerce Clause reserves, to the United States Congress, the authority to regulate commerce between the states and with foreign countries. The Courts have long recognized the so-called "dormant" nature of the Commerce Clause as prohibiting states from such areas of regulation unless authorized by Congress. As a result, while movement of waste between Michigan counties is still regulated by state law, we are unable to restrict imports of solid waste from outside of the state.

Solid waste import data has been collected by the Department on a Fiscal Year (FY) basis since FY 1996. Data from these reports indicate an increase in the level of imports over the last five years. Based on data collected for the past five FYs, there has been an overall increase of 18 percent in the amount of solid waste being generated in Michigan. However, imports of waste from Canada and other states rose by 41 percent during this same time period.

Out-of-state and Canadian waste being disposed of in Michigan is equivalent to approximately 20 percent of the solid waste stream that is generated annually in Michigan. As a result, for every five years of disposal of this volume of out-of-state waste, Michigan is losing a full year of landfill capacity. Total out-of-state imports of waste into Michigan landfills rose from 6,349,695 cubic yards during the 1999 reporting period to 9,373,115 cubic yards in FY 2000, an increase of 46.7 percent. The largest individual source of waste imports continues to be from Canada, with total reported imports to landfills of 4,216,814 cubic yards, up 1,874,023 cubic yards or 80 percent from the 1999 FY. This increased amount of waste imports also means there is an increased amount of truck traffic on Michigan roads. Truck traffic continues to be a growing concern because there are currently an estimated 65 trucks per day from Toronto alone and an estimated 110-130 trucks per day in total from Canada. As the amount of truck traffic increases, the dangers associated with this increased truck traffic also continues to rise. While wastes have been received from a number of states, most of the out-of-state waste that is not imported from Canada, comes from those states immediately adjacent to Michigan; Ohio, Wisconsin, Illinois, and Indiana. Michigan does not collect data on waste exports; however, contacts with neighboring states indicate that Michigan exports only very limited quantities of solid waste.

A particular concern to Michigan is the fact that our Canadian neighbors are foregoing more cost-effective disposal options that are available to them within their own country in favor of transporting their solid waste into Michigan. This was particularly noteworthy in Toronto's decision to forego the proposal to utilize the Adam's Mine site in Kirkland Lake. This site presented several advantages including (1) providing for the long-term disposal needs of Canadian residents; (2) offering economic benefits for Canada, including retention of jobs in Ontario; and (3) use of railroad lines, which are a safer and more efficient means of waste transportation compared to roads. In addition, higher costs for disposal in Michigan would intensify the challenges that already exist for Toronto's city budget.

Since the 1992 Fort Gratiot decision, Governor John Engler has worked on a cooperative basis with other states and with the Congress to seek a balanced and comprehensive legislative remedy to this issue. In addition, on May 28, 1999, Governor Engler took action to further evaluate how Michigan can best address the issue of regulating imports of solid waste from other states and countries by establishing the Michigan Solid Waste Importation Task Force (Task Force). The Task Force was created to examine trends, causes, and consequences of out-of-state waste imports and to develop recommendations to address this issue. Outcomes identified in the Task Force's final report, which were based on data only through 1998, include:

- If imports were to remain at then current levels, which were increasing between FYs 1997 and 1998 at a rate of .3 percent, their impact on available disposal capacity would continue to be minimal.
- Solid waste imports show a continuing trend to increase and recent figures show the rate of increase is growing significantly, as shown in more recent data which indicate between FYs 1999 and 2000, imports are now increasing at a rate of 32 percent.
- Losing capacity at significantly increased rates undermines long-term comprehensive solid waste management planning conducted by Michigan communities.
- Continuing increases in imports will hinder growth of recycling in Michigan.
- State legislation that will actually limit waste imports will likely not withstand constitutional challenge, and state legislative approaches that will withstand constitutional challenge are not likely to be effective at limiting imports.

- All state level efforts attempted in other states to control waste imports have been found unconstitutional because Congress has not enacted laws to grant states the authority to regulate this area of commerce.

It is clear that the only sure remedy to withstand legal challenge is one based on authority granted to states by Congress; and most court decisions have made clear that Congress has this authority.

Since the 1992 Fort Gratiot decision, the Michigan Legislature has proposed several bills seeking to restrict imports of out-of-state solid waste. These bills have generally followed two approaches. One is to impose an outright ban. Similar laws enacted in other states have been uniformly struck down as unconstitutional. The other is to prohibit imports from jurisdictions whose disposal bans are less stringent than Michigan's. Based on the Fort Gratiot decision and subsequent Supreme Court decisions, it is clear that absent federal legislation authorizing states to restrict imports/exports of out-of-state waste, such state laws would not withstand legal scrutiny.

Michigan strongly supports HR 1213. We believe that this bill, if enacted, would provide Michigan and other states the tools needed to restrict out-of-state waste imports in a manner that would be the most effective approach for managing environmental impacts from waste imports.

While Michigan's preference remains HR 1213, we understand that HR 667 has also been introduced to provide states with the ability to prohibit waste imports provided that their state plan has been approved. Prohibitions may not be the best approach to this issue.

Recently, Congressman Mike Rogers has introduced legislation, HR 1927, which would give states the authority to prohibit or limit foreign municipal solid waste. The Department is pleased Congressman Rogers has recognized this as a serious issue and has joined our efforts to enact federal legislation to give states control over municipal solid waste crossing their borders. Although HR 1927 differs somewhat from other bills that Governor Engler supports, such as HR 1213 introduced by Congressman Jim Greenwood (R-PA), HR 1927 sends a strong message and would give Michigan the authority and flexibility to address waste coming from Canada. As a new member of Congress, Congressman Rogers' active involvement in getting the U.S. House of Representatives to move forward on solid waste legislation is extremely welcome, and can only help ensure that we get the strongest possible legislation out of the Congress and to the President's desk.

We believe that the balanced regulation of interstate waste will prove to be an effective means of maintaining disposal capacity created by Michigan's communities and intended for Michigan's citizens, protecting Michigan's natural resources, and alleviating inadvertent disposal of wastes that are not permitted in Michigan landfills as a result of regulatory differences between United States and Canadian law. As previously mentioned, we believe giving states reasonable authority to restrict out-of-state waste imports is the most effective approach for managing environmental impacts from waste imports that will withstand legal challenge while minimizing disruptions to appropriate waste disposal markets.

Thank you again for the opportunity to provide this testimony. At this time, states have very limited ability to regulate imports of out-of-state solid waste; however, it is possible for federal legislation to create a balance between the communities' plans for their long-term disposal needs and the needs of private waste disposal firms to operate profitably, to compete fairly with each other, and to honor existing contractual relationships. Michigan welcomes the opportunity to provide assistance to this committee in developing legislation which would give states the ability to impose reasonable regulation of waste imports while recognizing existing waste management relationships and the needs of the waste disposal industry and waste generators to operate effectively. At this time, I would be pleased to answer any questions you may have.

Mr. GILLMOR. Commissioner Kaplan.

STATEMENT OF LORI F. KAPLAN

Ms. KAPLAN. Thank you very much, Mr. Chairman, members of the subcommittee. I am Lori Kaplan. I am the commissioner of the Indiana Department of Environmental Management, and I appreciate the invitation to appear before you this morning to speak on the legislation that is under consideration.

I also would like to take the opportunity to thank the entire Indiana delegation who has stood united through the years to support

efforts to control out-of-State waste into the State of Indiana. And, in particular, I would like to thank Congressman Buyer, new member to this subcommittee, who has helped lead the bipartisan effort along with Congressman Pete Visclosky on this matter.

I would like to give you a little bit of history from Indiana to paint the picture, if you will. We have been one of the leading States as far as receipt of imports of out-of-State waste throughout the past decade or more. In 1996, we did receive 1.8 million tons of out-of-State waste. We were on an upward trend at that point. It continued to go up until 1998 when we received 2.7 million tons of out-of-State waste. I am happy to report that we are now on a slight downward trend. This last year we received 1.6 million tons of out-of-State waste. However, that still kept us ranked sixth of all States in receipt of out-of-State waste, and it also comprised 20 percent of all waste disposed of at municipal solid waste facilities at Indiana landfills.

During the last year, the bulk of the out-of-State waste was received by adjacent States—or from adjacent States. However, that has not always been true. It is not that long ago that we were the recipient of many tons of waste from east coast States. This last year we did not receive any long-haul shipments of municipal solid waste to our landfills from east coast States, but as we all know, change can occur rapidly in the waste industry, and this also pertains to out-of-State waste. Governor Frank O'Bannon and myself are primarily interested in obtaining the tools that the administration and local officials can use to have control of the volume of out-of-State we receive, and our primary goal is to protect our State's disposal capacity and also protect and preserve our natural resources.

As you have heard from my colleagues, I would also stand in agreement. We are not advocating a total prohibition on imports or exports of out-of-State waste. There are times when it certainly is the most logistical and economical way in which to deal with it. However, there do need to be local controls for the sake of reliability so that we can predict what our capacities are and what our needs are going to be.

Right now, in Indiana, we have 17 years of capacity in our current landfills. If we continue to receive wastes at the level we did in the year 2000, we would reduce that capacity by 3 years. Should we revert back to 1998 levels when we were receiving 2.7 million tons of waste, we would lose 8 years off of our current capacity. If we had some type of controls in place where we could predict what the incoming waste would be from other States, we could plan better.

Like our other States, we have also had several attempts through our State legislature, enacting laws to use reasonable, sensible ways in which to have some control over the influx of out-of-State waste. Of course, the Federal courts found those statutes to be unconstitutional and recognized the need for Federal legislation that would assist at the local level.

We do stand, the State of Indiana, in support of 1213 filed by Mr. Greenwood and find many provisions in that that would be very beneficial to the State of Indiana as well as other States. Particularly, we do still have a law on the books in Indiana that requires

a needs assessment before a new landfill or an expansion can be permitted, where we take into account regional and local need. Twelve-thirteen would authorize that. It has not yet been challenged in our courts, and we are not sure it would withstand a constitutional challenge.

We also have had incidents in the past of receipt of waste from Canada. In 1991, we received 15,000 tons of waste from Canada. It is not currently an issue, but it certainly could arise again, especially as we hear Canada's efforts to eliminate their own facilities.

In conclusion, I recognize that members of the committee do need to take into consideration the needs and concerns of all 50 States, as well as the private sector when contemplating something very important that would impact the Commerce Clause, as this would. However, I hope that you will agree that there are benefits to some local authority, local controls so that we can all best manage our waste and our resources that we have available.

So I would like to thank you for your time and for the invitation to appear here today. And at the conclusion, I would be happy to assist in any answering any questions. Thank you.

[The prepared statement of Lori F. Kaplan follows:]

PREPARED STATEMENT OF HON. LORI F. KAPLAN, COMMISSIONER, INDIANA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

INTRODUCTORY REMARKS

Mr. Chairman and distinguished members of the subcommittee, I am pleased to testify on pending legislation that would vest states and local governments with the authority to control shipments of out-of-state municipal solid waste (MSW). As members of the subcommittee may know, Indiana's elected state officials and federal representatives have long been concerned that our state's efforts to manage the disposal of our solid waste, as required under federal law, are threatened by unconstrained flows of garbage from other states. I therefore appreciate the opportunity to offer comments on behalf of the State of Indiana on three bills, H.R.667, H.R.1213, and H.R. 1927, which were recently introduced in the U.S. House of Representatives to address this issue.

There continues to be a necessity for legislation that would give the states some ability to control the influx of out-of-state waste. Shipments of interstate municipal solid waste continue to rise nationally, and so does public concern. A recent Congressional Research Service report on interstate waste shipments noted that imports have more than doubled from 14.5 million tons in 1993 to 32 million tons in 2000, a 120% increase over 7 years. In Indiana, 1998 was a peak year for disposal of out-of-state waste. In that year, almost 2.2 million tons of out-of-state municipal solid waste was disposed of at our MSW facilities, which are mostly landfills. Those 2.2 million tons of out-of-state waste represented 30% of the total amount of waste disposed of at our state's MSW facilities. Adding construction and demolition (C&D) debris and special waste, which are recorded separately, a total of 2.7 million tons of out-of-state waste was disposed of at Indiana MSW disposal sites in 1998—enough to cover two lanes of Interstate 95 from Washington, D.C. to Richmond, Virginia and back again with 10 feet of garbage. Since 1998 there has been a 40% drop in the amount of out-of-state municipal solid waste disposed of in Indiana. While this is certainly a good trend, waste imports remain very high and it is not a trend that can be guaranteed. The sporadic nature of waste flows could just as easily result in a significant increase in out-of-state waste next year.

Almost all of Indiana's out-of-state waste currently comes from neighboring states, with most shipments originating at transfer stations in the Chicago area and going to landfills in the northern portion of the state. A number of years ago, Indiana was deluged with garbage shipments from New Jersey and New York. However, through aggressive enforcement of state regulations concerning the types of waste allowed in landfills, negotiated agreements between Indiana and those two states, and the closure of several Indiana landfills receiving out-of-state waste, the flow was dramatically reduced. In fact, last year, no long-haul shipments of municipal solid waste from the East Coast were sent to any Indiana landfills.

While this situation could change, especially with the closure of the Fresh Kills landfill on Staten Island in New York, Governor Frank O'Bannon and I are chiefly concerned with ensuring that our administration and local officials gain the ability to control the overall amount of out-of-state waste shipments. Our primary goal is to protect our state's disposal capacity and natural resources; the origin of out-of-state shipments is not important.

At the present time, Indiana has approximately 17 years of in-state capacity based on current disposal rates, and the state's 61 solid waste management districts are working hard to reduce waste disposal. Indiana's efforts to manage in-state disposal capacity needs could easily be frustrated by an influx of out-of-state waste which could readily exhaust landfill capacity that has been saved through local recycling and waste reduction efforts. At the current rate of out-of-state waste shipments into Indiana, the capacity of our landfills could be reduced by three years. If Indiana was receiving out-of-state waste today at the 1998 rate, capacity would be reduced by eight years—almost one half of current projected capacity. It becomes difficult to make the case for waste reduction in Indiana as other states' garbage flows freely across our borders.

When, in 1990, out-of-state waste became an issue of public concern in Indiana, our state legislature passed several laws to protect our citizens against the unregulated importation of trash. These laws included a higher tipping fee for out-of-state waste and a requirement that out-of-state shipments be certified as not containing hazardous or infectious waste. A federal judge ruled that these laws violated the Commerce Clause of the United States Constitution and struck these provisions down.

A year later, in 1991, additional regulatory provisions were passed, including a ban on the hauling of food and other products in a vehicle also used to haul solid waste and an identification sticker for vehicles transporting waste into Indiana. These too were ruled unconstitutional.

Today, we still have a law in place from 1990 that requires applicants for new landfills or expansions to demonstrate that there is a local or regional need for additional capacity. This "needs" statute has been used to deny permits on several occasions, but there is great concern that this law too will not withstand court challenge without federal legislative action.

After listening to today's testimony, I urge you to act to address this issue in a manner that carefully balances the concerns of state and local officials, the importance of protecting our natural resources, and the legitimate business interests of the waste industry. Congress could have and should have acted on this issue years ago when two former members of Congress from Indiana—Senator Dan Coats and Congressman Phil Sharp—labored long and hard to pass legislation. Indiana's current congressional delegation has demonstrated a united support for enacting a federal interstate waste law. In the House, Congressman Steve Buyer, a new member of this subcommittee, and Congressman Pete Visclosky, have helped to lead this bipartisan effort the last several years.

H.R. 1213, THE "SOLID WASTE INTERSTATE TRANSPORTATION ACT OF 2001"

I believe that H.R. 1213, introduced by Congressman Jim Greenwood, represents a measured approach to providing states and localities with tools to limit but not eliminate out-of-state waste shipments.

There are five separate provisions within H.R. 1213 that Indiana could utilize today. The first is the presumptive ban that does not allow landfills to accept out-of-state waste unless authorized through a local host agreement, state permit, or an existing contract. The second is the authorization of a state to limit out-of-state waste amounts based on receipts in 1993. The third and most important of the provisions for Indiana is the recognition of the "Needs Law" that Indiana has used with some limited success but which is subject to challenge. The fourth provision provides that out-of-state waste can comprise, at a minimum, 20% of a state's total MSW. And the last provision is the ability for state's to impose a cost recovery surcharge on out-of-state waste to recoup the expenditure of tax dollars incurred as a result of the receipt of out-of-state waste.

Taken together, the provisions of H.R. 1213 do not eliminate altogether out-of-state waste shipments, which would be neither prudent nor necessary. They do, however, provide a mix of public notice requirements that will ensure public input in states' waste management programs and controls which can prevent unwanted floods of out-of-state trash.

H.R. 1927, THE "SOLID WASTE INTERNATIONAL TRANSPORTATION ACT OF 2001"

This legislation, introduced by Congressman Mike Rogers, is limited to dealing with solid waste originating from outside the United States. While such waste is not currently being disposed of in Indiana there have been periods of time in the past when Indiana received a significant number of shipments of solid waste from Canada. Specifically in 1991 Indiana received nearly 15,000 tons of solid waste from Canada. Due to the potential for importation of waste from Canada in the future and the impact such importation would have on landfill capacity, the State of Indiana supports the general concept of H.R. 1927. However, it is expected that H.R. 1213 would achieve the same goals without leading to a challenge under an international trade agreement as solid waste from both inside and outside the country would be subject to the same requirements.

H.R. 667, THE "SOLID WASTE COMPACT ACT"

This legislation, introduced by Congressman Paul Kanjorski, provides states the broad discretion to prohibit disposal of out-of-state waste provided the state has an approved State Plan under the federal regulations. While this legislation certainly provides states with the greatest flexibility in preventing out-of-state waste disposal it also provides the greatest potential for abuse of such authority. The legislation would allow a state to apply the prohibition statewide or to a specific landfill or incinerator. Such an approach does not recognize regional flows of solid waste, and while the greatest concern has been expressed relative to the import of waste into a state, every state also has communities near its borders which ship waste to a nearby landfill or incinerator in an adjoining state. For example, last year Indiana generated and disposed of over 6.2 million tons of solid waste within its borders. Indiana shipped less than 5% of that amount to surrounding states. It is expected that if H.R. 667 were enacted, a significant amount of negotiation between states would likely occur to develop interstate compacts relative to solid waste imports and exports. For Indiana significant staff resources would be required to negotiate with our four contiguous sister states. By comparison H.R. 1213 provides adequate guidance in the controls and limitations that may be used to restrict out-of-state waste so that interstate compacts would not be necessary.

CONCLUSION

I appreciate the interest of Chairman Gillmor and other subcommittee members in convening today's hearing and hope this is only a first step leading to enactment of legislation. Repeated and strenuous efforts to negotiate a settlement between major importing and exporting states—most recently involving Indiana, Michigan, New Jersey, New York, Ohio, Pennsylvania, and Virginia two years ago—have failed to produce any meaningful solution.

I recognize that this subcommittee must weigh the interests and concerns of all 50 states and the private sector when considering a matter involving interstate commerce. On this issue, however, I am hopeful that you and your colleagues will agree that states should be allowed to exercise a reasonable set of controls to protect their natural resources and solid waste disposal capacity, and ensure public support for their own waste reduction efforts. Governor O'Bannon and I believe Congress should not indefinitely delay legislative action.

Thank you again for allowing me to share the State of Indiana's concerns about this important public policy matter.

Mr. GILLMOR. Thank you.

Mr. Lhota.

STATEMENT OF JOSEPH J. LHOTA

Mr. LHOTA. Thank you, Mr. Chairman, members of the subcommittee. My name is Joseph Lhota, and I am deputy mayor for Operations for the city of New York. Among my responsibilities is ensuring the environmentally safe and economically sound management of the city's municipal solid waste. I implemented Mayor Guliani's plan to close the city's municipal landfill at Fresh Kills on Staten Island, and we closed it earlier this year. On behalf of the mayor, I appreciate the opportunity to testify today on the

pending interstate waste measures—bills that would have profoundly adverse effect on the city's day-to-day operations.

Mayor Guliani, Governor Pataki, and New York legislature agreed in 1996 to close Fresh Kills by December 31, 2001. I might add—and it is not in my prepared remarks—that this was done due to a lawsuit brought by then city councilman, Veto Fossella, to which the elected officials in New York State all responded. It is important that the subcommittee recognize from the outset that the Giuliani administration has shut down this facility responsibly and appropriately, with due consideration, we believe, for the States and their communities that have chosen to accept the city's municipal solid waste.

As I said, we closed the facility on March 22 of this year. And we require that all the municipal solid waste be disposed of in communities that expressly choose to accept our trash through valid and legally binding host community agreements. Since our plan mandates that the city can only export to willing, local jurisdictions, the Giuliani administration does not see the need for this legislation to require New York City to do what it already requires of itself.

In exporting its residential waste, the city is exercising nothing more than the right in the U.S. Constitution that is extended to cities and States nationwide: Responsible, efficient, and environmentally sound solid waste management through the heavily regulated and highly competitive private sector. Municipal solid waste shipments have long been upheld by the courts as a commodity in interstate commerce, and over the years communities have relied on the certainty that these decisions provide in protecting the long-term, free market plans to manage municipal solid waste. This is especially important in a landscape where the more rigorous environmental protections required under subtitle D of the Resource Conservation and Recovery Act.

Although the closure of Fresh Kills affects only the city's residential waste, the private market has been, and continues to be, essential to the management of that waste as it is has been to the disposal of the city's commercial waste. For years, almost 40 years, the city's commercial businesses have relied on private haulers to export waste from New York. For many communities and States, municipal solid waste disposal fees are an important revenue stream. I believe that each locality has a right to accept or reject the disposal of solid waste, not by Federal legislation but by locally decided host community agreements.

The fact is that the city, in securing contracts for waste disposal exclusively at host community agreement sites, has furthered a partnership that benefits importer States and exporters alike. As the Nation's largest and most densely populated city of 8 million people—comprised of three islands and a peninsula—the ability to send waste to newer, more advanced regional facilities located outside the city's boundaries is imperative.

For those localities that have opted to import our waste, the revenue generated through host community fees, licensing fees, and taxes has substantially enhanced their local economy, improved area infrastructure, paid for school construction, paved roads, and assisted host communities in meeting there own waste manage-

ment needs. Clearly, there are many other jurisdictions nationwide that share New York's approach, since 42 States import and 46 States, as well as the District of Columbia, export municipal solid waste.

For New York City and its businesses, it selects to handle municipal solid waste disposal. Certainty and the long-term security of waste management arrangements are fundamental to making the city a viable place to live and work. Once negotiated, any disruption to the contracts and agreements providing the city's waste disposal framework could interfere in its day-to-day operations.

This is why the city enthusiastically supports in importing community's right to negotiate a host community agreement most suited to its particular needs and to spell out in detail all of the provisions that make waste disposal from out-of-State acceptable to that locality. Conversely, the city will rely on private sector bidding to select the most competitive prices for disposal. Once formally agreed to, however, these agreements and contracts must be inviolate in order to preserve the mutual interests of both importers and exporters.

The city, the largest consumer market in the Nation, is not solely dependent on exporting municipal solid waste through private disposal markets. It currently runs one of the most ambitious recycling programs in the Nation. It is the only large city in America that requires 100 percent of its households to recycle, including multi-family dwellings. And recovers a higher percentage of household waste than any other large city in this country. The city currently maintains a combined residential and residential recycling rate of 58.9 percent.

Despite the city's best waste reduction and recycling efforts, however, the city will still need to dispose of a substantial amount of its waste outside of its boundaries. I am confident that the capacity, the market, and the desire to accommodate the city's waste at out-of-State disposal sites will exist in the foreseeable future. To that end, Fresh Kills was closed by relying on free market, private sector solutions predicated on the contractual strength of host community agreements.

On behalf of mayor and the city council, I thank the subcommittee and underscore the city's in addressing Congress' concerns regarding the transport of interstate waste. Thank you, Mr. Chairman.

[The prepared statement of Joseph J. Lhota follows:]

PREPARED STATEMENT OF JOSEPH J. LHOTA, DEPUTY MAYOR FOR OPERATIONS FOR THE CITY OF NEW YORK

Mr. Chairman and members of the Subcommittee, my name is Joseph Lhota, and I am New York City's Deputy Mayor for Operations. Among my responsibilities is ensuring the environmentally safe and economically sound management of the City's municipal solid waste (MSW). I implemented Mayor Giuliani's plan to close the City's last remaining municipal landfill at Fresh Kills. On behalf of the Mayor, I appreciate the opportunity to testify today on pending interstate waste measures—bills that could have a profoundly adverse effect on the City's day-to-day operations.

Mayor Giuliani and Governor Pataki agreed in 1996 to close Fresh Kills landfill by December 31, 2001, and this decision was the City's first step toward embarking on a new, environmentally sound course in the management of its solid waste. It is important that the Subcommittee recognize from the outset that the Giuliani Administration has shut down this facility responsibly and appropriately, with due consideration for the states and their communities that have chosen to accept the

City's MSW. On March 22nd the City sent its last shipment of garbage to Fresh Kills, completing a five-phase program, initiated in July of 1997, requiring that all its MSW be disposed of in communities that expressly choose to accept it through valid, legally-binding Host Community Agreements. Since this plan mandates that the City only export to willing jurisdictions, the Giuliani administration does not see a need for legislation to require New York City to do that which it already requires of itself.

In exporting its residential waste, the City is exercising nothing more than the right the Constitution extends to cities and states nationwide—responsible, efficient, and environmentally-sound solid waste management through heavily-regulated and highly competitive private sector businesses. MSW shipments have long been upheld by the courts as a commodity in interstate commerce, and over the years communities have relied on the certainty these decisions provide for protecting long-term, free market plans to manage solid waste. This is especially important in a landscape where the more rigorous environmental protections required under Subtitle D of the Resource Conservation and Recovery Act (RCRA) have compelled communities to close smaller landfills for the alternative of larger, costlier, state-of-the-art, regional facilities that comply with the law. In this context, the right to transport solid waste across state lines complements the basic reality that different regions have varying disposal capacities irrespective of state lines. Areas such as New York City and Chicago, lacking adequate space for landfills and/or prohibited from waste incineration, may be located closer to better and more cost-effective facilities in other states. These facilities need the additional waste generated elsewhere to pay for part of the increased cost of RCRA compliance.

Although the closure of Fresh Kills affects only the City's residential waste, the private market is as essential to the management of that waste as it is to disposing of the City's commercial waste. For years the City's businesses have relied on private haulers to export waste from New York. For many communities and states, MSW disposable fees are an important revenue stream. The City believes that each locality has the right to accept or reject the disposal of solid waste—not by federal legislation, but by locally decided Host Community Agreements.

The fact is that the City, in securing contracts for waste disposal exclusively at Host Community Agreement sites, has furthered a partnership that benefits importer and exporter alike. As the nation's largest and most densely-populated city of eight million people—comprised of three islands and a peninsula—the ability to send waste to newer, more advanced regional facilities located outside the City's boundaries acknowledges the very environmental, demographic, and geographical realities that made closing Fresh Kills necessary. For those localities that have opted to import our waste, the revenue generated through host fees, licensing fees, and taxes has substantially enhanced the local economy, improved area infrastructure, paid for school construction, paved roads, and assisted host communities in meeting there own waste management needs. Clearly, there are many other jurisdictions nationwide that share New York's approach, since 42 states import and 46 states and Washington, DC, export municipal solid waste.

For the City and the businesses it selects to handle MSW disposal, certainty and the long-term security of waste management arrangements are fundamental to making New York a viable place to live and work. Once negotiated, any disruption to the contracts and agreements providing the City's waste disposal framework could interfere with its day-to-day operations. This is why the City enthusiastically supports the importing community's right to negotiate a Host Community Agreement most suited to its particular needs, and to spell out in detail all of the provisions that make waste disposal from out-of-state acceptable to that locality. Conversely, the City will rely on private sector bidding to select the most competitive price for disposal. Once formally agreed to, however, these agreements and contracts must be inviolate in order to preserve the mutual interests of both importers and exporters.

In that regard, the City has not pre-determined where its municipal solid waste will be disposed. Instead, it has put into place measures that ensure each bidder has all of the requisite environmental permits, along with a Host Community Agreement that verifies the receiving jurisdiction's approval of the disposal facility and its acceptance of the imported waste with applicable fees. Furthermore, the existing authority that states have in permitting solid waste facilities in accordance with their own regulatory mandates, zoning ordinances, and land use provisions, suggests even less cause for federal intervention through legislation to restrict exports.

In closing Fresh Kills landfill, the City looked to the private sector and the competitive free market to shape the future availability of disposal sites. In July of 1997, when the City began the first phase of diverting waste from the landfill, The New York Times reported that New Jersey and Connecticut officials were ready to

welcome New York's waste because it made "good economic sense." Robert E. Wright, president of the Connecticut Resource Recovery Authority, which oversees and is part owner of that state's incinerators, told the press, "I guess we probably have a more favorable eye on New York than some more distant states." Of some jurisdictions *The Times* reported further, "In New Jersey, where counties have spent millions of dollars to build incinerators, local officials generally are eager for any guaranteed flow of trash. If anything, imported garbage at a plant like the Newark incinerator is more desirable than the local trash because the city gets a 10 percent share of the fee charged."

The City, the largest consumer market in the nation, is not solely dependent on exporting MSW through private disposal markets to close Fresh Kills. It currently runs one of the most ambitious recycling programs in the nation, and is the only large city in America that requires 100 percent of its households to recycle—including multi-family dwelling residents—and recovers a higher percentage of household waste than any other large city in the country. The Giuliani Administration plans to do even more. In the recently adopted City budget, the Mayor has included over $12 million additional dollars for the ongoing expansion of the City's recycling programs, including new materials, increased education and outreach, furthering compliance, new equipment for improving efficiency, increased enforcement, and residential backyard composting. The City currently maintains a combined residential and community recycling rate of 58.9 percent. Moreover, the Mayor's long-standing directive to all City agencies to reduce workplace waste and establish accountability measures for waste reduction have further reduced daily tonnage.

The City's residents are huge consumers of goods manufactured in and shipped from other states, and the waste generated by packaging materials is significant. For that reason, the Mayor supports federal legislation that would limit packaging or require manufacturers to use some percentage of recycled content in packaging material. Such requirements would have a tremendous—and measurable—effect on the quantity of exported solid waste. Despite the City's best waste reduction and recycling efforts, however, the City will still need to dispose of a substantial amount of its waste outside its boundaries. I am confident that the capacity, the market, and the desire to accommodate the City's waste at out-of-state disposal sites will exist in the foreseeable future. To that end, the Giuliani administration has successfully closed Fresh Kills by relying on free market, private sector solutions predicated on the strength of Host Community Agreements.

On behalf of Mayor Giuliani, I thank the Subcommittee, and underscore the City's interest in addressing Congress' concerns regarding the interstate transport of municipal solid waste.

Mr. GILLMOR. Thank you, Mayor, and we will now proceed to questions of the panel. Let me start with a question for Director Jones. You mentioned in your testimony that Ohio has taken steps to ensure that it has the landfill capacity it needs. Could you elaborate on how that relates to the need for this legislation?

Mr. JONES. Mr. Chairman, it really is a question of fairness. I think, as has been mentioned before, and why we have watched Pennsylvania very closely, we have taken the steps to address a capacity need. We had limited capacity in the late eighties. We got comprehensive legislation in place to address that. We have put a tremendous amount of time, energy, effort, and cost into planning, into management. We now have the third revision to our statewide management plan out for public comment. And at least as a result—part as a result of all that effort, we have got our capacity established for the next 20 years, and we all know how difficult it is to site a landfill. And the fairness comes into it to the extent that we should not have to try to anticipate some unreasonably high level of imports that we can't plan for nor can we control.

And we are—I think it has been emphasized several times, we are not saying we don't want any. We actually export a million tons and import more than that. So we are not saying don't do it, but we are saying give us the ability to control it as a matter of fairness and encourage other States to take the same steps. When you

close Fresh Kills, obviously you are going to have to replace that capacity. We are suggesting maybe replace it in New York as opposed to Ohio. And I think that that is what we are talking about. It is the unfairness of trying to anticipate an unreasonable amount of out-of-State waste imported to the State of Ohio.

Mr. GILLMOR. Director, what would be the effect, in your opinion, if Federal out-of-State—or Federal legislation on out-of-State waste is not enacted?

Mr. JONES. Well, we have started to see some of the impacts, because, again, our landfills in Northeast Ohio are right now applying for increased capacity. And as I mentioned in my testimony, we have the benefit of very good interstates—east-west interstates that meet in Northeast Ohio. And with the trend over the last 4 years being increased imports, we expect that is going to continue. And because of that, the opposition to siting landfills, other landfills in the State of Ohio will increase. We have had a number of bills introduced in the general assembly to put a flat moratorium on any new landfills in the State, and we have to be able to plan for the future, to site landfills.

We take the position that because—I was told when I was appointed, "The natural resources guy, that is the good guy. They do lakes and parks and fish. You are the bad guy; you site landfills." And that is—I think we all have that experience. Putting a landfill in is a difficult thing to do. When the percentage is you are putting a landfill near me to handle waste from 500 miles away? It becomes next to impossible to do that in a thoughtful manner. And so my concern is we are going to have 12 years of effort putting in place a very strong management go down the drain because of something we have no control over. The ability that this legislation gives us to control some of that out-of-State waste, I think, will allow us to argue back, "No, our siting criteria and good and positive, and they will allow us to address these issues."

Mr. GILLMOR. Thank you. Just a quick question, Mayor Lhota. You talked about the closing of Fresh Kills and the requirement that the waste be disposed of in communities with a host community agreement. Of the host community agreements you have, how many of them are proportionally in communities in New York State?

Mr. LHOTA. Mr. Chairman, to my knowledge, of the 25 hose community agreements we have, none of them are in New York State. They were competitively—the city of New York competitively bid out, under our procurements requirements. As we phased in the closure of Fresh Kills, we advertised nationally, working with the private sector, and received bids back. And we, obviously, under our requirements, also went for the least costly bids. I don't know the answer to the question how many we received from New York State, but I do know that none of the ones that we have entered into—we have entered into 19. Six are currently under what we call vendex review, what is called our procurement process. All of them, all 25 are outside the State of New York.

Mr. GILLMOR. Thank you. The gentleman from New Jersey, Mr. Pallone.

Mr. PALLONE. Just following up on that, has the State of New York or New York City undertaken any actions to provide disposal capacity for New York City trash within the State of New York?

Mr. LHOTA. Mr. Pallone, I can only speak for the city of New York. I have had numerous meetings with the commissioner of Environmental Conservation in New York State discussing this issue, but I don't know specifically what they have done. And I apologize that I don't have an answer for you.

Mr. PALLONE. Is there—I will ask some of the other State witnesses, have you engaged in good faith negotiations with New York to come up with a compromise? And if so, what was the outcome of those negotiations, if anybody else wants to respond, for those who are taking trash from New York?

Mr. HESS. Mr. Pallone, I believe it was about 2 years ago there were some serious efforts underway to negotiate with New York City, but unfortunately that ultimately fell apart.

Mr. PALLONE. You wanted to say something? Go ahead. Okay. I guess then it is your position—I guess you have already stated it, but it is obvious after these few questions here—that unless this committee or the Congress acts, there is no real prospect for relief from unwanted out-of-State trash?

Mr. JONES. Mr. Pallone, I came from the attorney general's office. I was in environmental enforcement, so I think my background tells me there have been enough lawsuits, there have been enough attempts at the State level to impose restrictions that have been stricken down by the courts that I think we know, as Russ says, the legislation won't go anywhere. The courts have been clear that the Congress has to act to give us these tools for us to manage waste in our States.

Mr. PALLONE. And because of those rulings, any effort to compromise and negotiate anything basically has no teeth, and you can't get anybody to agree on anything.

Mr. JONES. It becomes very difficult.

Mr. PALLONE. Okay. Go ahead, Mr. Harding.

Mr. HARDING. Yes. In our State, the Governor—actually, some of the folks in the legislature that proposed these laws, he put them on a task force, and they came back after studying it, and said, "Congress has to solve it."

Mr. PALLONE. Okay. I wanted to ask—I have a concern over the fact that recycling and waste reduction efforts are not working as well as I would like them to. And I just wondered if there is any effect from out-of-State imports on the willingness of your States' citizens' participation, for example, in waste reduction or recycling programs? Does that impact or in any way related to the fact that it is becoming more difficult to do waste reduction or get citizens involved in recycling? Anybody who would like to answer that.

Ms. KAPLAN. Thank you. Obviously—and I was remiss in not stating in my testimony—that we do have solid waste districts that cover just about our entire State. And the main goal of those solid waste districts is to divert waste from our landfills through reuse, recycling, and reduction. And, obviously, all capacity gained as a result of that, if it is lost to out-of-State waste, becomes self-defeating, and it is hard to continue to motivate the population to do that. We have opted to do it, at this point in time, in Indiana on

a voluntary basis. But what is the incentive if it does not gain anything for them?

Mr. PALLONE. So you think it has an impact, and it may contribute to less citizen involvement.

Ms. KAPLAN. I think that that is a real concern.

Mr. PALLONE. Anyone else want to comment on that? Mr. Harding?

Mr. HARDING. Well, I would say I would agree. I think that largely we have some market problems of recycling, and that is a heavy part of it, but I think a proposed solution here could provide an incentive for the State to get into more mandated recycling, even with some of the market problems, to participate in having more control over the destiny of our waste. Without that, there is not a lot of political will.

Mr. PALLONE. Go ahead, Mr. Jones.

Mr. JONES. One of the things that we have done as a part of our statewide management plan, we set recycling goals, and for approval, each of the solid waste management districts has to have a plan in place that meets that goal for their district before they can get their plan approved. So we have taken the steps that we can, but as has been mentioned, it is almost a self-defeating proposition. And given the effort that it takes, really, to get recycling done, it is hard to convince management districts you need to make this huge effort if all you are going to do is create space for out-of-State waste.

Mr. PALLONE. Thank you. Thank you, Mr. Chairman.

Mr. GILLMOR. Thank you very much. Let me say, the bells indicate we have three votes in the House. We have got about maybe 10 minutes more of questioning. We are trying to wrap up questions of this panel, and if we are able to, then we can recess and do the next panel at 1 o'clock. The gentleman, Mr. Buyer.

Mr. BUYER. Thank you. I have just a series of questions. To the gentleman from New York, are there environmental laws or regulations in the State of New York that restrict your ability to enter into these agreements with anyone from your State? I mean I don't understand why you have got to have these agreements with other people and not your State. So hold that thought.

To Ms. Kaplan, my question to you is that in your testimony you indicate that the volume of out-of-State has decreased somewhat in the last 2 years. While I am pleased to see that, I would like to know what you attribute to this reduction.

Also, Ms. Kaplan, it appears clear that legislation, such as H.R. 1927, providing authority for States to prohibit incoming shipments of foreign solid waste would run afoul with existing international agreements, such as the provisions under NAFTA and the principal bilateral agreement negotiated between the United States and Canada covering such waste shipments. The Governor of Indiana, Governor Frank O'Bannon, and lieutenant Governor are also, like myself, supporters of NAFTA. In your testimony, you allude to these concerns with Mr. Rogers' legislation. I would like for you to elaborate.

Also in your testimony, you note that H.R. 1213 might be a more effective way to achieve the same goals. Because H.R. 1213 provides similar authorities to restrict, via cap or freeze, et cetera, in-

coming out-of-State municipal solid waste, whether foreign or domestic. Would those provisions also likely run afoul with existing international trade agreements?

Ms. KAPLAN. Would you like me to go first? First of all, as far as the decrease of out-of-State waste in Indiana, in reviewing that and trying to determine what the reason for that would be, one is that we had been receiving a larger amount of waste from the Chicago area, and there have been additional facilities opened up or expanded in that area, so less has been exported from Chicago to Indiana.

Also, in prior years, as I had indicated, we did receive a great deal of waste from east coast States. There has been a lot of work between representatives of those States and negotiations. And I believe through those efforts the east coast waste is not currently coming to Indiana. So I think those are two of the main reasons.

One of the things that we have talked about today is the unpredictability of the travels of out-of-State waste and where it ends up. So while we are seeing a downward, it could turn around again.

In my written testimony, we did state a preference by the State of Indiana for H.R. 1213. Many provisions in that that would benefit the State. There was some concern, although I will say that there was not extensive analysis, on the impact on international trade agreements. However, it appears that 1213 would cover the international waste concerns that we had, and we, therefore, endorse that piece of legislation.

Mr. LHOTA. In response to your question, there are, to my knowledge, no statute, rules, regulations pertaining toward waste going from New York City to somewhere else in New York State. The reason why none of it has gone to New York State is purely economic. The city of New York puts out bids, and has over the last 4½ years nationwide, and advertises. We then look at what is the least expensive route to disposal of a city's trash. And in that process, jurisdictions outside the State of New York have been less expensive.

Mr. PALLONE. Let me ask this: Would the State of New York permit a landfill within 3 miles of the Hudson River, Upstate New York?

Mr. LHOTA. I can't—I do not know.

Mr. PALLONE. Because that is where it happens in Indiana. It is within a few miles of the Tippecanoe River where I grew up, and the Chicago trash gets dumped right in there. So if you have got a State like New York who says, "No, you can't put it within so many miles of a particular river or stream," that is fine, that is your business. But then you don't care if you want to send that trash to somebody else. That is what makes it pretty insensitive from the views of the importing States. That is why I am just curious whether you have particular regulations, environmental compliance that forces you to put it out onto other States?

Mr. LHOTA. I don't know the specifics of to be able to answer your question, sir, I am sorry.

Mr. PALLONE. Thank you.

Mr. GILLMOR. We have about 5 minutes before the vote. We will go to Mr. Towns for questions. Then we will break, and we will re-

convene at 1 and finish this panel and do the next panel. Mr. Towns.

Mr. TOWNS. Thank you very much, Mr. Chairman. Let me just sort of make certain that something is clear here. That there is an RFP that goes out and people bid, and then based on the lowest bidder in all of that, that is what really happens to the—where it ends up. And these contracts are monitored, as I understand it. Is that correct?

Mr. LHOTA. That is correct.

Mr. TOWNS. So if there was a lowest bidder in New York and it was the best deal, you would have to contract with that person in New York.

Mr. LHOTA. We would.

Mr. TOWNS. So I want to make that very clear. How does the mayor's long-term plan for waste disposal place a greater emphasis on barge and rail shipment of export rather than trucking?

Mr. LHOTA. The long-term export plan relies exclusively on barge and rail to mitigate the negative impact of the amount of trucks that are put onto the roads, both as various different State commissioners have testified prior to my testimony of the negative impact of the number of trucks on the roads. I tend to agree and have met with the private sector, those people that we have contracted with, and said it is very important that their trucks be up—there be no violations.

As the secretary from—or the commissioner from the Pennsylvania and the Commonwealth of Pennsylvania, immediately after he began his program met with the private sector to say, "Look, it is very important, just as the city of New York gives violations to truckers whose trucks are not up to snuff." We give them violations. That is the right of the Commonwealth of Pennsylvania. It is very important that we respect the rights of these other States when it comes to trucking. The long-term plan, however, involves no trucking. It will be almost 90 percent by rail—basically 100 percent by rail; the rest by barge.

Mr. TOWNS. Mr. Chairman, I know we have a vote on, so let me, first of all, thank you very much for allowing me to ask some questions. Also to say to you, Deputy Mayor, that really I appreciate the effort that you have done in terms of dealing with these contracts in local jurisdictions. These are people that have agreed to accept. It is not something that anyone is forcing them to do, and I think that that needs to be made clear. This is an agreement, and that based on the agreement this is the way it ends up there. It is not that New York is riding around in a helicopter dropping the garbage out in different locations, and I think that needs to be made clear.

I mean the way—so you are talking about legislation, but I think we need to look at what we are dealing with here. If there is an area that is saying that "We would like to bid for this," and you pay me a fee for it, I think we have to be careful how we move here, Mr. Chairman. I know some folks are anxious and eager to dump on New York, but I think maybe we need to find another way to do it. Thank you.

Mr. GILLMOR. That would make the New York the dumpee instead of the dumper, right?

The committee stands in recess until 1 o'clock.

[Whereupon, at 12:07 p.m., the subcommittee recessed, to reconvene at 1 p.m., the same day.]

Mr. GILLMOR. The subcommittee will come to order, and we will resume panel two and complete our round of questioning.

The gentleman from New York, Mr. Fossella.

Mr. FOSSELLA. Thank you, Mr. Chairman, again. Just, again, to put some perspective back into this, I know some of the panelists were concerned, and it seemed as if New York was the only issue. However, according to Congressional Research Service, Pennsylvania exports more than 553,000 tons of garbage. The folks from Ohio might be upset, because 77 percent of that goes to Ohio. Virginia exports about 150,000 tons. Ohio exports over a million tons, primarily to Michigan.

And I guess what I am just aiming at—adding that as a purpose to demonstrate that this happens all the time—Michigan to Ohio, Pennsylvania to Ohio, Ohio to Michigan. So I just don't want to make it seem like New York or people in New York are the only ones that generate garbage and need to do something about it. Not to suggest that what you have been trying to do is unreasonable or in your State's best interest, but I think it is a level of perspective that is warranted in this debate.

I have got a question here. Accordingly, Mr. Jones, you mention in your testimony that Ohio receives 380,000 tons of waste from Pennsylvania and that Pennsylvania has been one of the top exporting States to Ohio over the past 5 years. And Mr. Hess, in his testimony, says, "Some States have found it easier to dump on their neighbors than to develop disposal facilities and recycling programs to handle the waste they generate." Do you believe this is the case with Pennsylvania or does it only underscore that waste is shipped interstate for economic and geographic reasons, not because some States are irresponsible?

And last, I think it was a reasonable and legitimate concern, and I ask this of all of you—in particular let me, one, commend Mr. Lhota, because closing the Fresh Kills Landfill was a monumental task, and he really needs to be credited a great deal for doing that, because he has worked hard, and the people of New York, in particular Staten Island, should be grateful.

But Mr. Lhota, I know we have concerns about the haulers and truckers, which is a reasonable safety concern. So I am curious to hear not only from you but from others of what steps and measures are being taken to address the safety of those haulers that transport waste across State lines.

Mr. LHOTA. Mr. Fossella, I will be very brief, because I think the commissioners from the other States should address this issue. But immediately upon the beginning or the commencement of Operation Clean Sweep, which is, I believe, the Commonwealth of Pennsylvania's program—is that what it is called Clean Sweep? I met with the industry—representatives of the industry to say that it is an important thing that the trucks all be properly registered and be safe and be sound. Not all of the trucks that were stopped in Pennsylvania came through with trash from New York City, but you shouldn't be able to distinguish one from another. Those trucks need to drive safe and soundly. Just as I am responsible for enforc-

ing the laws of the city of New York, they are responsible for enforcing the laws in their jurisdictions in this particular State. So what I did immediately upon recognition that some of these trucks being used were not up to snuff, met with the industry to say, "You have got to get your act together. This is a very important thing to do."

Mr. FOSSELLA. Thank you.

Mr. JONES. I think I would respond in a couple ways to your question. First, you compare the 380,000 tons from the entire State of Pennsylvania to the 333,000 tons from the city of New York, and that is why I pay attention to New York City. It is 24 percent of all out-of-State waste receipts are from one city. So that causes me to pay attention to it. We consider, essentially, the western two-thirds of the State of Pennsylvania to be short haul, and I think we have all talked about the fact that we don't object to imports. We all import and export. I think all of these States do that. The particularly troubling part of it is the long haul, and when 24 percent of the out-of-State waste comes from one city, and it is a long-haul city, I have to pay attention to that. But I think more importantly both Pennsylvania and Ohio have been very proactive. For Ohio, literally over a decade ago, we started the process of comprehensive planning and management for waste disposal, and very purposefully and deliberately increased our capacity statewide.

And I think the concern I have is that it hasn't been a secret for a long time that Fresh Kills was closing, and I think the testimony this morning was that 25 host community agreements are all outside the State of New York. And our concern is New York needs to address its major problem—I mean closing that much capacity is a problem they have to address—and it shouldn't be addressed simply by disposing out of State. We think it is appropriate to look in-State as well, just as Ohio and Pennsylvania have done in order to address the problem.

Mr. HESS. Mr. Chairman, if I might briefly address this issue. I think, too, it is also a matter of scale. Half a million tons a year is a far cry from the 9.8 million tons a year we get from out of State. I would also say, just to echo what Chris said, it is a lot different when States are making an effort. But when it is clearly the case that New York is not making any effort to develop capacity, that does raise the fairness issue.

On the truck safety issue, we thought it was fairly ironic, and I do welcome the efforts of the city of New York to police the trucks coming into Pennsylvania, the odd situation was that the top three trucking companies—the three trucking companies with the most violations were the biggest companies—Waste Management, Gephardt Trucking, and BFI in our 40,000 inspections. They had the most problems. It wasn't the little guys that typically some people may think have the problems. It was the big guys, and unfortunately those guys are involved in long-haul hauling of trash. And, again, I welcome whatever the city of New York can do to police it from their end, because it is a critical public safety issue.

Mr. GILLMOR. Do you have additional questions, Vito?

Mr. FOSSELLA. More of just a statement. I think—I would hope New York does—the State of New York does take measures, and I know they have been meeting over the last several years to try

to develop a plan. So to say they haven't been taking any steps, I think, is unfair and just not accurate. Now, are we satisfied what they have done? That is a matter of disagreement, but to say they haven't done anything I think is unfair.

All I want to suggest is somehow it seems okay, and I am not criticizing the States and the gentleman and the ladies up here at all, because they have a very serious job, a very heavy responsibility, and I am sure they do it all, and they take their jobs very seriously, but they address their municipal solid waste, residential garbage, if you will, by entering into agreements with surrounding States. And New York does the same. I just want to make sure everyone is aware that what is good for the goose is good for the gander. Now, you may argue over the volume and the amounts, and that is a matter of criticism that you can lobby, but every State—well, not every State—but a lot of States do it, millions of tons every day go across our highways from State to State. And just to label New York, paint it in the corner, I think is unfair.

Mr. GILLMOR. That will conclude this panel. I would ask the panel as some members of the committee have indicated they had some additional questions they may want to submit to you in writing, and we would appreciate it if you could respond to those. And thank you very much for being here. Very helpful.

We will call panel three, which is our final panel. It is comprised of Bruce Parker of the National Solid Waste Management Association; Ervin Rogers, the chairman of the board of supervisors in Gloucester, Virginia; Mr. Tim Berlekamp, director of the Mahoning County, Ohio Recycling Division, who has the distinction of being from the same home county as the chairman, which is a little place, so you don't often find two of us together at the same time; Mr. Thomas Woodham, vice chairman of Lee County, South Carolina Council in Bishopville, South Carolina.

Gentlemen, we have your testimony, and if you would take 5 minutes to summarize your presentation before we move to questions. I want to thank you all for coming, and we will begin with Mr. Parker. And I also apologize for the wait until we got to this panel, but some of these things are beyond our control.

Mr. Parker.

STATEMENTS OF BRUCE PARKER, PRESIDENT AND CEO, NATIONAL SOLID WASTE MANAGEMENT ASSOCIATION; ERVIN ROGERS, CHAIRMAN, BOARD OF SUPERVISORS, GLOUCESTER, VIRGINIA; TIMOTHY B. BERLEKAMP, DIRECTOR, RECYCLING DIVISION OF MAHONING COUNTY, OHIO; AND THOMAS WOODHAM, VICE CHAIRMAN, LEE COUNTY, SOUTH CAROLINA

Mr. PARKER. Thank you, Mr. Chairman. Can you hear me? Good. My name is Bruce Parker, and I am the executive vice president of the National Solid Waste Management Association. NWSWMA represents the private sector waste services industry. Our members operate in all 50 States.

The message that I want to leave you with is simply this: Restricted borders have no legitimate role in managing municipal solid waste or any other commodity, for that matter, in our economy. They make neither economic nor environmental sense. They

are contrary to the trend toward bigger, better disposal facilities and to the trend toward more innovative, flexible waste management technologies and practices. For these reasons, NWSMA members are opposed to H.R. 1213 on principle, as well as for other reasons set forth in the detailed analysis as an attachment of this statement.

In spite of all the impassioned language you have heard denouncing interstate movement of waste, the reality is simple: Most States export and import garbage, and none are harmed in the process. If you look to that chart right there, that map, that dramatically depicts, on a national basis, what basically is a very intricate and extensive web of transactions, mostly between contiguous States and involving both imports and exports. In fact, according to the Congressional Research Service's recent update on interstate movements, 46 States exported MSW and 42 States imported solid waste. Only one State, Hawaii, neither imported nor exported. Twenty-four States and the District of Columbia and the Province of Ontario exported more than 100,000 tons last year, and 28 States imported more than 100,000 tons. Fifteen of these States imported and exported more than 100,000 tons.

The point I think is that, like recyclables, raw materials, finished products, other goods, solid waste does not recognize State lines as it moves through commerce. The trash from the District of Columbia or Maryland is no different than the trash from New Jersey or California or Ohio.

Now, what really explains this tremendous web of transactions that is on that chart? The answer, I think, is this: In 1990, America had nearly 10,000 disposal facilities; today we have less than 2,600. This dramatic change resulted as small landfills closed under the Federal Resource Conservation Act, subtitle D, and in response to State requirements for tougher environmental protection and financial assurance, both of which substantially increased development costs, construction costs, operating and maintenance costs of these facilities. The CRS report notes, as someone else testified earlier, that the number of landfills declined 51 percent between 1993 and 1999. Incidentally, RCRA and the role of the States in fostering larger regional facilities was a matter of national policy, I may add.

Bigger, better, more environmentally protected disposal facilities were, or said differently, regional facilities serving communities in waste sheds were constructed out of necessity and in anticipation of receiving sufficient volume of waste, both within and outside the host State, to generate revenues to recoup these development costs as well as a reasonable return on investment. The development of regional landfills was not only entirely consistent with all applicable laws, but as just stated, they were responsible to and promoted by Federal and State policy as the best solution to the need for economical and environmentally protected disposal of MSW.

Solid waste moves across State lines not only because many out-of-State landfills are closer to communities than those in their own State, such as in the Chicago Collar County area that sends waste to Wisconsin as well as to Indiana. But many communities, in fact, actually invite waste in. They invite waste in, because they look upon disposal as just another type of an investor activity that pro-

vides a source for jobs and income. These communities benefit from significant contributions to the local fiscal through host fees, property taxes, and business license fees. These communities have built schools, they have built other public facilities, they have hired teachers, they have hired policemen and firemen as a result of these host community payments.

Significantly, this issue of interstate disposal is not a public versus private issue, as so many issues are. The Solid Waste Association in North America, the acronym is SWANA, which represents our counterpart, the public sector of solid waste managers, is a officially on record of supporting the free movement of solid waste across jurisdictional boundaries. They know, as we do, that restricting the movement of interstate waste will increase disposal requests for local communities and be a tax increase on their residents.

Let me also address for a moment, if I may, and very briefly, H.R. 1927, the bill sponsored by Representative Rogers. H.R. 1927 is aimed at restricting Canadian garbage. This bill, on its face, would violate the North American Free Trade Agreement, which prohibits unilateral attempts to discriminate against trade between any of the three NAFTA countries. And I think it is also emphasized by some of the questions of earlier panelists. In addition, the U.S. exports increasing amounts of hazardous waste to Canadian disposal facilities. If our borders are closed to Canadian solid waste, why can't Canada shuts its borders to hazardous waste originating in Michigan, Pennsylvania or other States?

In conclusion, I appreciate the opportunity to testify. My formal remarks are concluded, and I would be happy to answer any questions that you should have. Thank you.

[The prepared statement of Bruce Parker follows:]

PREPARED STATEMENT OF BRUCE PARKER, EXECUTIVE VICE PRESIDENT, NATIONAL SOLID WASTES MANAGEMENT ASSOCIATION

Mr. Chairman, on behalf of the private sector solid waste management industry, I appreciate the opportunity to testify today on proposed interstate waste legislation. I am Bruce Parker, Executive Vice President of the National Solid Wastes Management Association (NSWMA). NSWMA represents private sector companies that collect and process recyclables, own and operate compost facilities and collect and dispose of municipal solid waste. NSWMA members operate in all fifty states.

The solid waste industry is a $43 billion industry that employs more than 350,000 workers. We are proud of the job we do and proud of the contribution our companies and their employees make in protecting the public health and the environment. America has a solid waste management system that is the envy of the world because of our ability to guarantee quick and efficient collection and disposal of trash in a manner that fully conforms with state and Federal waste management laws and regulations.

Our members provide solid waste management services in a heavily regulated and highly competitive business environment. Like all businesses, we are keenly interested in proposals, such as restrictions on the interstate movement of MSW, that would change that regulatory or competitive environment, increase the cost of waste disposal and threaten the value of investments and plans we have made in reliance on the existing law.

The message I want to leave with you is this: restricted borders have no legitimate place in managing trash or any other product in our economy. They do not make economic or environmental sense. They are contrary to the concept of open borders; contrary to the evolution to bigger, better, more environmentally sound disposal facilities; contrary to our desire to keep disposal costs for taxpayers low, and contrary to the trend toward more innovative, flexible, waste management facilities.

In the balance of this statement, I will share with you our reasons for concern and opposition to H.R. 1213, the "Solid Waste Interstate Transportation of 2001",

H.R. 1214, the "Municipal Solid Waste Flow Control Act of 2001" and H.R. 1927, the "Solid Waste International Transportation Act of 2001". I will discuss the background and context as we see it, and the flaws in the proposed legislation. In particular, detailed comments on H.R. 1213 are set forth in an attachment to this statement.

THE SCOPE OF INTERSTATE MOVEMENTS

Interstate waste shipments are a normal part of commerce. In spite of all the impassioned language you have heard from a few states denouncing garbage that moves across state lines, the reality is simple: most states import and export garbage and none are harmed in the process.

According to "Interstate Shipment of Municipal Solid Waste: 2001 Update", which was released by the Congressional Research Service (CRS) in mid-July, 30 million tons of MSW crosses state borders. This equals approximately 13% of the garbage generated in the United States and about 18% of the garbage disposed of in the United States.

These shipments form a complex web of transactions that often involve exchanges between two contiguous states in which each state both exports and imports MSW. In fact, the vast majority of MSW, more than 80%, goes to a disposal facility in a neighboring state. According to the CRS report, 24 states, the District of Columbia and the province of Ontario exported more than 100,000 tons of solid waste last year. At the same time, 28 states imported more than 100,000 tons. Fifteen states imported *and* exported more than 100,000 tons.

The CRS report documents interstate movements of MSW involving 49 of the 50 states. Forty-six states, the District of Columbia and one Canadian province export and 42 states import. Attached is a map showing the movement of solid waste among the states based on the data in the CRS report.

Moreover, while some states are the biggest exporters based on tonnage, several small states and the District of Columbia are highly dependent on waste exports. In addition to Washington, DC, which exports all of its MSW, Maryland, New Jersey and Vermont export the highest percentage of solid waste. The reality is that MSW moves across state lines as a normal and necessary part of an environmentally protective and cost effective solid waste management system. Like recyclables, raw materials and finished products, solid waste does not recognize state lines as it moves through commerce.

CRS cites a number of reasons for interstate movements. These include enhanced disposal regulations and the subsequent decline in facilities. In addition, CRS notes that in larger states "there are sometimes differences in available disposal capacity in different regions with the state. Areas without capacity may be closer to landfills (or may at least find cheaper disposal options) in other states."

THE ROLE OF REGIONAL LANDFILLS

The CRS report notes that the number of landfills in the US declined by 51% between 1993 and 1999 as small landfills closed in response to the increased costs of construction and operation under the Resource Conservation and Recovery Act (RCRA) Subtitle D and state requirements for more stringent environmental protection and financial assurance. The number of landfills in the early 1990s was nearly 10,000 while today there are about 2,600 and the total number continues to decline as small landfills close, and communities in "wastesheds" turn to state-of-the-art regional landfills that provide safe, environmentally protective, affordable disposal.

Construction and operation of such facilities, of course, requires a substantial financial investment. By necessity, regional landfills have been designed in anticipation of receiving a sufficient volume of waste from the wasteshed, both within and outside the host State, to generate revenues to recoup those costs and provide a reasonable return on investment.

It was widely recognized that the costs to most communities of Subtitle D compliant "local" landfills were prohibitive. The development of regional landfills was not only entirely consistent with all applicable law, it was viewed and promoted by Federal and State officials and policy as the best solution to the need for economic and environmentally protective disposal of MSW.

These regional landfills provide safe and affordable disposal as well as significant contributions to the local economy through host fees, property taxes, and business license fees. Additional contributions to the communities include free waste disposal and recycling services, and in some cases assumption of the costs of closing their substandard local landfills. These revenues and services enable the host communities to improve and maintain infrastructure and public services that would otherwise not be feasible.

BOTH THE PUBLIC AND THE PRIVATE SECTORS OPPOSE INTERSTATE RESTRICTIONS

NSWMA is not alone in opposing restrictions on interstate waste. The Solid Waste Association of North America (SWANA), which represents public sector solid waste managers, also opposes these restrictions. At its mid-year meeting last summer, SWANA's International Board of Directors voted unanimously to approve a policy statement that supports "the free trans-boundary movement of solid waste".

Public sector waste managers and private sector waste management companies agree that they can't do their job and protect the public health and the environment while having their hands tied by artificial restrictions based on state lines.

HOST COMMUNITIES BENEFIT

MSW also moves across state lines because some communities invite it in. Many communities view waste disposal as just another type of industrial activity, as a source of jobs and income. As noted above, these communities agree to host landfills and in exchange receive benefits, which are often called host community fees, that help build schools, buy fire trucks and police cars, and hire teachers, firemen and policemen and keep the local tax base lower.

THE BROADER CONTEXT

The proposed legislation before you would radically disrupt and transform the situation I have described. For that reason, as well as the precedential nature of some of the provisions, let me suggest that you consider those bills in a broader context.

The applicability of the Commerce Clause to the disposal of out-of-State waste is well established by a long line of U.S. Supreme Court decisions spanning more than a quarter of a century. As you probably know, the original decision protected Pennsylvania's right to export its garbage to a neighboring state. The Court has consistently invalidated such restrictions in the absence of Federal legislation authorizing them.

Throughout this period, private sector companies did what businesses do: they made plans, invested, wrote contracts, and marketed their products and services in reliance on the rules which clearly protected disposal of out-of-State MSW from restrictions based solely upon its place of origin.

In this fundamental sense, the interstate commerce in waste services is like any other business, and proposed legislation to restrict it should be evaluated in the broader context of how you would view it if its principles and provisions were made applicable to other goods and services, rather than just garbage.

Consider, for example, parking lots. Suppose a State or local government sought Federal legislation authorizing it to ban, limit, or charge a differential fee for parking by out-of-State cars at privately owned lots or garages, arguing that they were using spaces needed for in-State cars, and that the congestion they caused was interfering with urban planning, etc. Or suppose they asked for authority to tell privately owned nursing homes or hospitals that they couldn't treat out-of-State patients because of the need to reserve the space, specialized equipment, and skilled personnel to meet the needs of their own citizens. Similar examples can easily be identified—commercial office space for out-of-State businesses, physicians and dentists in private practice treating out-of-State patients, even food or drug stores selling to out-of-State customers.

I would hope that in all of these cases, you would respond to the proponents of such legislation by asking a number of questions before proceeding to support the restrictions: What kind of restrictions do you want? Are they all really necessary? Can you meet your objectives with less damaging and disruptive means? What about existing investments that were made in reliance on the ability to serve out-of-State people? What about contracts that have been executed to provide that service? Would authorizing or imposing such restrictions be an unfunded mandate on the private sector providing those services, or on the public sector outside the State that is relying on them? Would such restrictions result in the diminution of the value of property purchased in reliance on an out-of-State market, and thereby constitute a "taking"? Will the restrictions be workable and predictable? I respectfully suggest that you ask the same questions about the proposed legislation involving restrictions on interstate msw.

THE PROPOSED LEGISLATION

The proposed legislation before you (H.R. 1213, H.R. 1214 and H.R. 1927) fail to protect host agreements, investments or contracts. None of the bills preserves an opportunity to enter and grow in a market that demands economic and protective waste disposal. And none of the bills provides predictability about the rules that will

apply to interstate shipments of waste. The array of discretionary authorities for Governors to ban, freeze, cap, and impose fees, and then change their minds -over and over again, promises to result in chaos and a totally unpredictable and unreliable market and waste disposal infrastructure. In the worst case, hasty state action to ban or limit imports could lead to a public health crisis in exporting states if their garbage has no where to go. As noted earlier, attached to this statement is a detailed analysis of the many flaws that I see in the provisions of H.R. 1213.

Finally, let me comment briefly on H.R. 1214, which would restore flow control authority, and on H.R. 1927, which would allow states to prohibit the importation of MSW form Canada and Mexico, signatories with the United States to the North American Free Trade Agreement.

FLOW CONTROL

NSWMA opposes restoration of flow control because it's too late to put Humpty Dumpty back together again. In the 7 years since the *Carbone* decision, landfills and transfer stations have been constructed, trucks have been bought, people have been hired, contracts have been written, and both the consumers and providers of waste services have experienced the benefits of a competitive market. These investments and arrangements cannot be undone, nor should they be. The facilities that benefited from an uncompetitive monopolization of local solid waste management have learned to compete in a free market. They have become more efficient and competitive as a result of the rigors of the free market system. Why would anyone want to replace a competitive system with uncompetitive monopolies?

PROHIBITING THE IMPORTATION OF CANADIAN WASTE VIOLATES NAFTA

H.R. 1927, the Solid Waste International Transportation Act of 2001, would allow states to ban solid waste from other countries. This legislation is aimed directly at Canadian exports. As such, it is inconsistent with the national treatment requirement of the North American Free Trade Agreement (NAFTA) which provides that Mexico, Canada and the United States must treat goods from one another in. a manner that is no less favorable than that accorded to domestically produced like products. This requirement of national treatment extends to states.

MSW may not be everyone's favorite commodity, but it is protected by the same free trade provisions that protect paper and cars and television sets. If we could close our borders to Canadian solid waste, what would prevent Canada from closing its borders to American hazardous waste? American exports of hazardous waste to Canadian disposal facilities have increased dramatically over the last five years. If Michigan can ban Canadian MSW, should not the Canadians be allowed to ban Michigan hazardous waste?

CONCLUSION

Thank you, Mr. Chairman. That concludes my statement.

Mr. GILLMOR. Thank you, Mr. Parker.

Mr. Rogers.

STATEMENT OF ERVIN ROGERS

Mr. ERVIN ROGERS. Thank you, Mr. Chairman. Mr. Chairman, members of the subcommittee, I appreciate the opportunity to address you today concerning the legislation before you at this time. I currently serve Gloucester County, Virginia as chairman of the board of supervisors. I am here today to express my views not those of the board, though I would like to leave with you a resolution passed by the board supporting State Senator Billing's legislation known as the Solid Waste Management Act of 1999 giving the State of Virginia some control over the amount of waste imported from out of State. My intent here is to show you from the public record what the board's attitude was concerning controls on import of out-of-State waste.

I would also like to leave with you a resolution passed by the Gloucester Republican Committee supporting previous House bill, H.R. 1190, also putting controls on out-of-State waste. Again, I

hope to show you from the public record that at least one faction of the community supported controls on out-of-State waste. It is my opinion that the majority of the County of Gloucester supports local and State controls on the import of out-of-State waste, but these two resolutions are the only proof from public record I could acquire on short notice.

During my time to address you today, I would like to present some information concerning the mega landfill located in Gloucester County, Virginia. I want to include information concerning our contract with Waste Management, some history about how the facility came to be built, some input on how the community has been affected by the landfill, and finally give you a brief statement of my position concerning the legislation before this subcommittee.

Before I get started, I would like to take a moment to give you some insight in how I became interested in local politics. I entered local politics in 1992 over the board's desire to build a mega landfill in Gloucester. I was a principal leader in the fight against the facility. I attended board meetings for 2 years before the contract between Gloucester County and Waste Management was signed and for another 4 years before being elected to the board. I also attended Planning Commission Meetings for 4 years prior to serving on the board. After the contract was signed I was concerned about where county leadership was taking the county. I sought out the Planning Commission to help me with these concerns. I found that this commission and its staff was forward thinking with only the best interest of the county in mind. My current position on the landfill in Gloucester is to make the best out of the contract without increase daily tonnage.

With your permission, I would like to continue by stating some facts about Gloucester's contract with Waste Management. Gloucester owns the mega facility and has contracted with Waste Management to operate it. The facility was purchased with money donated to the county for that purpose by Waste Management—around $2 million. The contract states that if for any reason Gloucester terminates the contract, the county will reimburse all money invested in the facility by Waste Management, including this $2 million. The contract is for 20 years, and Waste Management has the right to renew. The county cannot deny them renewal.

Waste Management must dispose of Gloucester's solid waste for 20 years, even if they walk away from the facility. Waste Management is allowed to dispose of 2,000 tons a day in the facility, including the tonnage from the county. Gloucester County gets 50 cents a ton up to a certain tonnage, then $1 a ton tipping fees. Estimated income for next year is $375,681. We also get an inspection fee of $56,522 and an implementation fee of $91,371, for a total of $523,574.

Primary benefit to Gloucester County is deferred cost for county waste disposal. The landfill should have a life expectancy of 47 years at a rate of 2,000 tons a day. The facility occupies 500 acres and will rise to 300 feet. In the year 2000, Waste Management's figures stated that the facility brought in 519,532.7 tons. And in-State tonnage was 184,094.2 tons. Out-of-State tonnage was 335,438.5 tons, or 64.5 percent of the facility's capacity used in 2000 came from out-of-State.

Now I would like to address some history concerning the implementation of this facility. The contract was signed in 1992; the facility went into operation in 1995. The decision by the board of supervisors to bring a commercial landfill to Gloucester County was by a vote of 4 to 3. The community showed up at board meetings at a rate of about 250 people for 2 years to show their disfavor with the board's position. Eight thousand names were collected on a petition against bringing such a facility to Gloucester County and presented to the board.

After the contract was signed, a movement took place to remove four supervisors that voted for this contract from office on the grounds of malfeasance. The required number of signatures were collected to bring this issue to court. In the case of the at-large supervisor, this amounted to 1,681 registered voter signatures. The case was dismissed due to a technicality.

All four board members that supported the landfill were removed from office in their next bid for re-election. One had been in office for 28 years and was defeated by the first woman elected to the Gloucester Board of Supervisors, a 32-year-old teacher's aide. Another had been on the board for 16 years and was defeated by a margin of approximately 2 to 1. Another had been on the board for 12 years and another for 4 years. This supervisor finished fourth in a four-way race.

One was defeated within 1 year of the contract signing and the other three were defeated 2 years after the signing. The citizens of Gloucester County had long memories concerning this issue. Two board members that did not support the landfill are still on the board; the other ran successfully for re-election one more time and then retired. I currently fill his seat. I represent the district where this facility exists.

I personally was told by a Waste Management representative, in a private conversation, that New York solid waste would never be disposed of in Gloucester County, that this facility would be only a regional landfill. The landfill is still a volatile issue in Gloucester county.

How has this facility affected county? The landfill has been operating since 1995. Nearly all citizens that lived on the perimeter of the landfill have sold their homes and property to Waste Management and moved. The community has been inconvenienced by traffic, noise, odor, and litter. There have been a couple of engineering mistakes that have caused prolonged problems with large volumes of escaping gas—one lasted for a period of nearly 6 months. Medical waste has been found on the property a couple of times. Erosion has caused problems with adjoining property.

The facility manager has been successful with an extensive public relations campaign. He is active with the chamber of commerce and has made numerous donations to public service organizations. He lives in James City County. I consider this man a friend. We don't often agree on matters concerning the facility, but have learned to work together, sometimes coming to an agreement, sometimes not.

It is my opinion that landfills are a necessary evil but a threat to the environment. No engineering solution that is composed of a man-made material can last forever. A State should only have

landfill capacity that allows it to manage solid waste in a manner that is acceptable to its citizens. Without the capability to manage the amount of out-of-State waste brought into a State, no meaningful solid waste disposal strategy can be developed by a State or local government. Without the ability to develop such a strategy, a State can have nothing to say about the environmental risk that is being imposed on its citizens and natural resources by the disposal of solid waste within its boundaries.

Waste disposal companies and counties that have become dependent, for whatever reason, on solid waste tipping fees will control all of this. For this reason, I support the Greenwood bill and the changes proposed by Representative Davis. Giving States the ability to set caps on the percentage of solid waste imported from out of State in existing facilities is paramount to allowing States to manage solid waste in a meaningful way. Thank you very much, sir.

Mr. GILLMOR. Thank you, Mr. Rogers.

Mr. Berlekamp.

STATEMENT OF TIMOTHY B. BERLEKAMP

Mr. BERLEKAMP. I would like to begin by changing my written testimony from "Good morning, Mr. Chairman" to "Good afternoon, Mr. Chairman and subcommittee members." My name is Tim Berlekamp. I am the director of the Recycling Division in Mahoning County, which used to be the Mahoning County Solid Waste Management. I appreciate the opportunity to testify on H.R. 1213 in its current state. I would like to say that I agree in principle with this legislation, but I am a bit concerned with its grandfathering issues.

I would first like to describe the condition of my current county. Mahoning County is located on the Ohio-Pennsylvania border. We have three active private sector landfills, of which one of them is the largest in the State of Ohio and responsible for at least one-third to one-half of the imported out-of-State waste. This particular landfill also has a current host agreement with the Board of County Commissioners, the Recycling Division, the Health District, Poland Township, which is the host community township for this landfill.

This agreement was first executed in 1990, shortly after the passage of house bill 592, which I think you are endearingly responsible for, Mr. Chairman, and we appreciate that in the State of Ohio. I would like to also clarify there are no host agreements with the other two active landfills at this time, but their import of out-of-State waste is insignificant to the 500,000 to 700,000 tons a year from BFI/Carbon Line.

I took my position as the director of Mahoning County in February 1999, so I can only comment on previous negotiations through historical records and discussions with those present at the time. We have, however, in the last 2 months renegotiated agreement at this particular facility for an additional 500 tons of long-haul waste. to clarify the difference between long haul and local waste, there is a 150-mile radius within that facility. Anything outside of that 150 miles we consider as long haul.

I need to note that the original agreement was amended four times prior to this one, and I bring that point to surface in order to show that a good host agreement is able to be amended with the changing conditions of the time.

I have two major issues I would like to present to the subcommittee. The first is the strength of a good public/private sector relationship accomplished through constructive and professional negotiations. Mahoning County has benefited from BFI/Allied, not only through the revenues legislated by house bill 592 but also by the negotiated conditions allowing BFI/Allied to receive out-of-State waste and benefits to the local communities, such as water lines, waste-water treatment plants, road maintenance, sidewalks, ball fields, and free waste disposal for affected citizens, which are just a few of these.

We are also the only county in the State of Ohio that receives free curbside recycling and continues to enjoy a good dialog with BFI/Allied as conditions change and needs arise. I must emphasize, however, I do not believe that this relationship would have accrued without the anticipated passage of house bill 592, and for this reason, I believe legislation like H.R. 1213 is necessary.

The landfill had been operated several years before 592 with little or no benefits realized to our community. The need for legislation requiring operators and local communities to negotiate their fate is definitely required. This issue is perhaps one where the private sector and I would disagree since their optimum position would be there are no barriers to the flow of interstate waste.

During my years as a public servant, six of which were as a county commissioner, I never remember a time when any private sector entity approached me and asked me to negotiate a relationship which would impact their operation unless it was for a tax abatement or monetary incentive that would enhance their operation. For this reason, I believe that the principles of H.R. 1213 are a good one.

The second issue I would like to address would be the intent of H.R. 1213 to ensure local control. I feel that the bill restricts or limits, through definitions and exceptions, the grandfathering of many good current host agreements within the State of Ohio. An example is the definition of "affected local government" as "The public body authorized by State law to plan for the management of municipal solid waste, a majority of the members which are elected officials, for the area in which a landfill or incinerator is located or proposed to be located."

Now the following explanation is rather complicated, so I am going to move through it a little bit slowly. In Ohio, the State law requires a Policy Committee to be developed to make the planning environment for the area which it affects. That planning body is made up of a county commissioner or his designee, the mayor of the largest metropolitan area or his designee—he or she—a township trustee, and the board of health director. Those four then appoint three ad hoc committee members, of which two represent the citizenry and one represents an industrial representative. As you can clearly see, there are only three elected officials on a body of seven, and therefore the definition of effected local government may contradict what Ohio has done.

But I go on to say that once they have developed a plan that plan must be ratified by a unanimous vote of the Board of Commissioners, by the unanimous vote of the largest metropolitan area, and by at least 60 percent of the population of the area of which it affects. I think that is a very positive affirmative action process, which then fulfills the intent of the author of this legislation.

In summary, I would like to emphasize one major point: Local control of State waste issues is imperative. Another tool for meeting such fundamental local control responsibility is flow control authority, and I urge this subcommittee to take consideration of H.R. 1214 in the near future. I believe we have come a long way from the local community dumps many of us remember, including yourself, Mr. Chairman, on the banks of the Sandusky River in Old Fort, Ohio. And I believe that our private sector partners in this effort have worked diligently to communicate and cooperate when required. This solid waste playing field must always have two teams and a fair set of rules to ensure the most economical, environmentally sound and professional service to our constituents. Thank you all for your time, and I would be happy to answer any questions upon the completion of this testimony.

[The prepared statement of Timothy B. Berlekamp follows:]

PREPARED STATEMENT OF TIMOTHY B. BERLEKAMP, DIRECTOR, RECYCLING DIVISION OF MAHONING COUNTY

Good morning Chairman Gillmor and members of this subcommittee. My name is Tim Berlekamp, and I am the Director of the Recycling Division of Mahoning County, a.k.a. Mahoning County Solid Waste Management District. I appreciate the opportunity to testify on HR 1213 in its current state. I would like to say that I agree in principle with this legislation but I am concerned with some of the provisions and definitions related to the grandfathering of current host agreements.

I would like first to describe my county's situation. Mahoning County is located on the Ohio-Pennsylvania border. We have three active private sector landfills and two closed ones. The largest of the active landfills is Carbon Limestone that is operated by BFI/Allied and is located directly on the border between Pennsylvania and Ohio. This particular landfill is also one of the largest in the State of Ohio and is responsible for approximately one third of the out-of-state waste received within the state. There currently exists a host community agreement between BFI/Allied and the Board of Commissioners, the Recycling Division, Poland Township, the township in which the landfill is located, and the local health department. This agreement was first executed in June of 1990 shortly after the passage of HB 592, Ohio's first and only comprehensive solid waste management legislation. HB 592 was passed June 24, 1988. I believe that you are very familiar with this legislation, Mr. Chairman. I would also like to clarify the fact that there is no county host agreement with the other two landfills, one of which is operated by Waste Management and the other privately owned by Ms. Joanne Douglas and her family.

I took my position as Director in Mahoning County in February, 1999, so I can only comment on previous negotiations through historical records and discussions with those present at the time. We have, however, just recently negotiated an addendum to the original agreement allowing a 500-ton per day increase in long haul waste. For agreement purposes, we consider anything outside of a 150-mile radius as long haul. I need to note here that the original agreement has been amended through negotiations four previous times, so this addendum would make the fifth. I make this point to illustrate the ability of concerned entities to adapt their agreements to changing conditions. This is the power of good host community arrangements.

I have two major issues I would like to present to this Subcommittee. The first is the strength of a good public/private sector relationship accomplished through constructive and professional negotiations. Mahoning County has benefited from BFI/Allied not only through the revenues legislated by HB 592 but also by negotiated conditions allowing BFI/Allied to receive out-of-state waste. Such benefits as water lines, a waste-water treatment plant, road maintenance and free waste disposal to affected citizens are just a few. We are the only county within the state

of Ohio that receives free curbside recycling and continues to enjoy a working dialog with BFI/Allied as conditions change and needs arise. I must emphasize, however, I do not believe that this relationship would have accrued without the anticipated passage of HB 592, and for this reason, I believe legislation like HR 1213 is necessary. The landfill had operated several years prior HB 592 with little or no benefits realized by our community. The need for legislation requiring operators and local communities to negotiate their fate is definitely required. This issue is perhaps one where the private sector and I would disagree since their optimum position would be no barriers to the flow of interstate waste. During my years as a public servant, six of which were as a county commissioner, I never remember a time when any private sector entity approached me and asked for a negotiated relationship which would impact their operation unless it was for a tax incentive to enhance their operation. For this reason alone, I believe that the principle of HR 1213 is a good one.

The second issue I would like to address would be the intent of HR 1213 to ensure local control. I feel that the bill restricts or limits, through definitions and exceptions, the grandfathering of many good current host agreements within the state of Ohio. An example is the definition of "affected local government" as "(A) the public body authorized by State law to plan for the management of municipal solid waste, *a majority of the members of which are elected officials,* for the area in which a landfill or incinerator is located or proposed to be located."

I would like to refer to my own division. In order to have an approved plan which drives the negotiation process, a Policy Committee made up of a County Commissioner or his/her designee, a Township Trustee, the Mayor of the largest metropolitan area within the county or his/her designee, the Director of the local health district, two citizen representatives and one representative from an industrial generator must develop and write a comprehensive solid waste plan for the division. Once that plan has been written, it must be ratified by a unanimous vote of the Board of Commissioners, and affirmative votes by the largest metropolitan area and at least 60% of the population of the county represented by the townships, incorporated villages and other cities. I believe that you would agree that this process clearly represents the public will, but it would not meet HR 1213's narrow definition of "affected local government."

In summary, I would like to emphasize one major point. Local control of solid waste issues is imperative. Another tool for meeting such fundamental local government responsibility is flow control authority. I urge the subcommittee to take up consideration of HR 1214 in the near future.

I believe we have come a long way from the local community dumps many of us can remember, including yourself, Mr. Chairman on the banks of the Sandusky River in Old Fort, Ohio. And I believe that our private sector partners in this effort have worked diligently to communicate and cooperate when required. This solid waste playing field must always have two teams and a fair set of rules to ensure the most economical, environmentally sound and professional service to our constituents. Thank you all for your time and I would be happy to answer any questions you may have of me.

Mr. GILLMOR. Thank you very much.

Mr. Woodham.

STATEMENT OF THOMAS WOODHAM

Mr. WOODHAM. Thank you, Mr. Chairman. It is good to be here this afternoon. As you stated, my name is Thomas Woodham. I am vice chairman of Lee County Council at Bishopville, South Carolina. A little history about Lee County: We are located 60 miles east of Columbia off Interstate 20. We are in the PD region of South Carolina. We are a rural agriculture community. We are approximately 20,000 to 21,000 people. Our two largest employers, which closed about 4 years ago, were textile plants. Our county budget is around $8 million; our local school funding is $4.2 million. Our tax is $25,000.

When I first got elected in 1988, one of the first issues before me was the solid waste disposal. The county landfill was filling, which at that time was unlined hole in the ground that we were covering on a random basis, and I am not very proud of that. We attempted

to site a new landfill with DHEC, which is a State controlling agency. We had six or sever sites rejected. At that time, we knew we were not going to be able to get—meet the new regulations for an unlined facility.

We began negotiations with a waste firm to take control of our existing landfill and build a new subtitle D facility in Lee County. We reached an agreement and a contract for services. The company agreed to close out our old landfill with test wells. Lee County waste was accepted at no cost to Lee County residents. Any out-of-county waste Lee County received a tipping fee. At that time, we had no out-of-State waste. After a few years of operation and the council planning for the future of Lee County, the council revisited our contract with Allied Waste and negotiated receiving out-of-State waste.

Some of the benefits. Well, Allied Waste has been—No. 1, they have been a real good neighbor. We have an environmentally safe facility, reduced to eliminated costs for waste disposal in Lee County. Last year, we put $1.2 million in non-tax revenue in that $8 million budget. They have got 80 jobs out at the landfill; they are the largest taxpayer in Lee County. Closure and monitoring of the county's old landfill saved us approximately $1 million.

Control of our tax rates with growth in services, and examples of that, we just built a new $17 million high school in Lee County. The Sheriff's budget has gone from $300,000 to $1 million a year. Instead of about 9 years ago we were buying used patrol cars for North Carolina, we are rotating five new ones in each year. We built a new judicial center for magistrate court and the Sheriff's Department—$1.3 million. It is paid for. We have got a new emergency rural fire and disaster preparedness building.

Regional jail—we have gone into a regional jail agreement with our neighbor county, Sumter County. Our buying costs of $700,000, that money is already set aside in our budget. Last year we brought enhanced 911 center online—complete new department for Lee County with approximately 12 employees. The year we brought it online we cut the millage in Lee County. We have gone from rescue squad that was all volunteer to a countywide EMS which is a mix of paid and volunteers. We were putting in about $10,000 a year, and now it is up to a $300,000 budget. This year we bought three new ambulances at $80,000 apiece and three new fire trucks at a $140,000 apiece, completely upgrading our emergency response capabilities. We don't have a hospital in Lee County.

We upgraded our pay scales in order to get quality employees for quality results. We support our employees with continued education. At the current time, we are also building 10 recycling centers around the county for waste collection. We used to have about 120 sites that we picked up. Four of those are completed, and four more are coming online this year. The landfill has agreed to take over the hauling inside of the county from these locations.

With the money that we feel we are going to save on the hauling, we are beginning a rocking program for our dirt roads. We have got 400 miles of dirt roads in Lee County. We are upgrading our county buildings—the courthouse, the library, rural fire stations, Council on Aging Ag Center. Public Works has gotten two new motor graders, $170,000 apiece. Dump trucks, we have done a lot. Work-

ing with the city of Bishopville to upgrade our water and sewer and an infrastructure for industrial recruitment has been our No. 1 task.

We have gotten two new industries in the last 3 years. We have upgraded our old industrial park, paved the roads, drainage, lighting, we have got a 40,000 square foot spec building sitting on that site. We have also acquired 220 acres beside Interstate 20, on the other side of the county, and we have got curb and gutter with the retention ponds, water and sewer, 250,000-gallon water tank, substation, all the amenities you need in order to recruit industry.

We completely rebuilt our rail system in Lee County, because we have got about 30,000 tons a month that comes in by rail. We have increased our local funding to public education by 60 percent in the last 5 years, and I think that is the most important thing we have done. Working with adult education in the tech school for job training and continued education we hope to have a satellite campus for the tech school in Lee County in the near future. We know we have got to have an educated work force for future industry in Lee County.

The members of Lee County Council and I realize that 1 day the facility will close. Our plan is to upgrade education, emergency service, police protection, quality of life, and the ability to bring industry into Lee County. That is our future. As much as I hate to say it, it is all about money. Without the ability to negotiate our contract, knowing what our needs are, establishing a good working relationship and trust with the landfill operators, State inspection of the facility and monitoring, I hope you understand why Lee County supports out-of-State waste. Waste is a dirty word to some, but managed properly it can be a tremendous asset.

[The prepared statement of Thomas Woodham follows:]

PREPARED STATEMENT OF THOMAS WOODHAM, VICE CHAIRMAN OF THE LEE COUNTY, SOUTH CAROLINA COUNCIL

Mr. Chairman and members of the Subcommittee, my name is Thomas Woodham and I appreciate the opportunity to testify today on the movement of municipal solid waste between states. As a long time member of the Lee County Council I experienced first hand the closure of our substandard facility and the development of a Subtitle D facility to replace our old landfill.

Lee County is a poor, rural, agricultural community. As such many agricultural by-products such as animal wastes, pesticides and other agricultural by-products were disposed of in our landfill. A few years ago, the State of South Carolina told us we had an environmentally unsafe landfill and that we would have to close it. We made seven proposals to develop a new landfill, but each one was rejected by the state. At this time a private waste company approached us and offered to build and manage a waste facility in our county. We accepted their offer and the Lee County Landfill was developed with the state's blessing. Today our landfill takes in 2,500 tons of waste both from within our borders and outside our state borders. The landfill is inspected several times a month by state authorities and has never been found to pose any danger to the surrounding environment.

The benefits we have received from this arrangement with the private waste company include $1,000,000 in savings on the closure costs associated with our old landfill, free disposal for the county, a rebuilt rail line and more than $1,000,000 annually in host fees. The $1,000,000 in host fees we receive represents roughly one-eighth of our annual budget. We have invested these host fees in a new high school and new industrial park. Our objective is simple, reinvest the revenues generated by the landfill in projects designed to improve our infrastructure and thereby better position Lee County to attract new businesses long after the landfill has reached capacity and closed. Once the landfill is closed we plan on turning it into a 1,500 acre park for the citizens of Lee County to enjoy for years to come.

Without the revenues generated by this landfill, Lee County would not be able to develop the infrastructure necessary to attract new business in the future because there is a very limited tax base and no reason to believe that would change on its own. The landfill has been a savior for the county from a revenue perspective and every member of our county council is pleased with the arrangement we have with the private waste company. All told the savings we realized in the closing of the old landfill and free disposal and the host fees we receive from the facility will put tens of millions of dollars into our county coffers by the time the landfill reaches capacity. We would not have been able to generate similar revenues without the Lee County Landfill and the fees we receive from accepting out-of-state waste.

On behalf of Lee County, I would like to thank the Committee for letting me share our views with you. I would be happy to answer any questions.

Mr. GILLMOR. Thank you very much, Mr. Woodham, and we will proceed to questions. I wanted to ask you, Mr. Parker, in your statement, you talked about the legislation, if it passed, could result in a diminution of the property value and constitutionally constitute a taking. You want to elaborate on that a little bit? What would be the property that would be diminished in value, and what would be taken from constitutional——

Mr. PARKER. This is from my written testimony?

Mr. GILLMOR. Yes.

Mr. PARKER. Yes. If you look at the structure of the bill, it is very disingenuous, because it basically starts off with a presumptive ban, which says nothing can come in. And then it allows waste to come in the various facilities based upon certain conditions. You have to have a host community agreement, you have to have a contract, you have to have a permit. And then it puts conditions on those conditions to quality for exemptions, to qualify to be exempted from the 1993 base year level that the State can impose as the freeze, for the 20 percent restriction that the State can impose in terms of limiting out-of-State wastes that come in. It goes on and on.

My members have made significant capital investment based upon existing law at the time. They have made business plans, pursuant to the Constitution of the United States for publicly traded companies as well as for private companies that we represent, to build landfills to comply with Federal and State law—bigger, better, better engineered.

If in fact this legislation were enacted, I believe that there would be some serious questions of whether it doesn't violate the constitutional prohibition against taking. I would also add that this an area of law which is very fluent and dynamic. Indeed, just 2 weeks ago, the United States Supreme Court decided a case called Palazzolo v. Rhode Island, where the Supreme Court allowed taking claim to be filed, notwithstanding the fact that this gentleman who wanted to develop some land on the coast knew ahead of time that there were restrictions on that development. So I am suggesting that I think there are some serious takings questions, and I would be prepared, not today, to develop those more fully.

Mr. GILLMOR. Thank you. Let me ask Mr. Berlekamp, this is an area that is not directly related but somewhat related to the legislation we are dealing with today on interstate waste. But that is the matter of flow control. Do you have any comments on why you think flow control is important and how it might relate to the problem of interstate waste?

Mr. BERLEKAMP. Mr. Chairman, I think it goes more to the root of local control than just flow control. I think that the issue that stands before us today is that this is a diverse and fluid environment that both public and private sector operate within. And, historically, we have known, and flow control has been on the table for years and years and years, that public sector goes forward not only like private sector, which private sector having an integrated system has the ability most of the time to flow control to its own facilities automatically. Most public sector facilities are not totally integrated and put up capacity and incinerators to ensure disposal capacity for public sector citizens, and are caught short once that bondage is put out.

So I think serious consideration, which I think you are well aware in Ohio, which I think is really an optimum State in this. And I am proud of being from Ohio and what we have in solid waste management. I believe our director emphasized that also, that the courts in Ohio have upheld flow control within the State boundaries but has not restricted interstate commerce, and I believe that is really an ultimate position to be in as a State.

I believe we have taken a positive step forward in the State of Ohio to look futuristic to control even the out-of-State waste issues through this local contract. So I believe flow control is but one tool, and I think that it is important tool and should be available to those that want to exercise it.

Mr. GILLMOR. Thank you. Let me ask Mr. Woodham, does your facility have a host community agreement?

Mr. WOODHAM. Yes.

Mr. GILLMOR. Since you do, and H.R. 1213 would continue allow you to receive imports of out-of-State waste, do you think that under those circumstances H.R. 1213 is a bad situation for you in your particular instance?

Mr. WOODHAM. I would hate to have restrictions. I feel like we have done a real good job in Lee County of putting together our contract and our situation with the landfill. Just as was stated earlier, I believe, where it is hard to go back and renegotiate, we just renegotiated with them to take over the hauling within the boundaries of Lee County, which is going to save us approximately, we estimate, around $300,000 a year. We feel like if we have—and I think that statement was made earlier—if we can maintain and keep a good working relationship with the landfill in the county, we can continue to make changes as we see. We know it is a bottom line issue with them, but we have had nothing but good praise for Allied Waste.

Mr. GILLMOR. The gentleman from New Jersey?

Mr. PALLONE. Mr. Woodham, did you mention what the volume of tons was permitted at the landfill or how much comes from out of State or where it comes from? Did you get into that? If not, would you tell us?

Mr. WOODHAM. All right. Would you repeat that, I am sorry?

Mr. PALLONE. Well, in other words, what is the volume permitted at the landfill, and does it come from out of State and where does it come from?

Mr. WOODHAM. Well, our volumes are dictated by the Solid Waste Disposal Act in the State of South Carolina. I think there

is a total tonnage, and I think it is around a million tons per fiscal year that is allowed to go into that facility. So the State of South Carolina does have caps on how much can go in. It might be 1.3 million I believe is the total. As I stated, they completely rebuilt the rail system in Lee County, and——

Mr. PALLONE. No, I mean but does it come from out of State or where does it come from?

Mr. WOODHAM. I would say we have gotten approximately three-fifths comes from out of State.

Mr. PALLONE. And all over the place or——

Mr. WOODHAM. Well, it is coming in by rail, I think, from the Northeast, and we have got North Carolina; it is coming from there. And then the other waste is coming from throughout the State of South Carolina.

Mr. PALLONE. Okay. Well, again, I have to say I mean I—obviously, each town does what it wants, but—or each county, but my own experience—I mean my district—well, first of all, I should say New Jersey has more superfund and hazardous waste sites than any other State. And my district has more than any other district in the State. And we have got landfills for municipal garbage that years ago New Jersey used to take all this stuff, mostly from New York. And the problems that have existed ever since they have been closed is just incredible. I mean I have probably spent a good percentage of my time down here and back home trying to figure out what to do.

And so I mean I am always worried that even though it sounds very good now, what happens later when it closes? And I think you addressed the fact—I think you mentioned, Mr. Woodham, what procedures exist for closure and cleanup in the future or the size of the bond, financial bond. You mentioned that, I think, right?

Mr. WOODHAM. Well, there is—the State requires the closure. You have to have the closure planned and everything in place, and then there is a fiscal responsibility as far as the bond, and it takes——

Mr. PALLONE. And where was that? Did you mention the financial bond or what?

Mr. WOODHAM. No, I don't think I did.

Mr. PALLONE. And I was going to ask the same question of everybody else. In other words, if you would—you know, the amount of the financial bond that would ensure the proper closure and what plans are in place for the future in terms of any environmental contamination. I would ask Mr. Rogers that or anybody else who wanted to answer that as it applies to them. Mr. Woodham can start on that.

Mr. WOODHAM. We don't—I did not list that. But one thing that I have noticed that was brought to our attention earlier, we have a real good water source in Lee County, so everyone was extremely concerned about groundwater contamination. One thing that we picked up at the facility got online you have what is called an upstream and a downstream well. And on an inspection on an upstream well, there were some high Ph contents. And what they found out was they owned the land around the landfill. They were renting it to farmers, and they were putting in too much when they were liming the soil, so they got in touch with them and made sure

that they were liming the land when they shouldn't be. We picked that up on the upstream side. We went on the downstream side and checked the wells there; we didn't have the problem. So we had a benefit there. We found out we are farmers. We are not doing what they should have been doing. So I would say that was a benefit for us right there.

Mr. PALLONE. If each of you could just tell me what the amount of the financial bond is to ensure proper closure of the landfill or landfills and address any future environmental contamination. If you don't have it, if you can't tell me now, maybe you can get it to us in writing. But I would like to hear from some of you. Maybe you don't have the specific figure about the financial bond, but could you get back to us with that in writing?

Mr. ERVIN ROGERS. I will have to do it from memory, but what I remember about the contract is that as a facility grows there is a certain amount of money set aside to cover closure, up to $10 million. And as I recall, the cap of the bond is—or the money set aside for closure is $10 million. There has always been questions as to whether $10 million would be adequate for closure or to cover any kind of environmental contamination that might occur.

Mr. PARKER. Thank you, Mr. Pallone. I don't operate a landfill, but I am a lawyer—a reformed lawyer; I don't practice anymore.

Mr. PALLONE. Reformed lawyer?

Mr. PARKER. Right. But I was general counsel of this organization, so I was fairly active when the financial insurance regulations were passed, so I would just add the following: That the financial insurance regulations, which is part of 258 of the subtitle D regulations, require every facility to insure for both closure and post-closure care for 30 years. And as I understand it, there is no set amount. It depends upon a formula that every landfill has to determine. Some landfills have more of a financial insurance than the other, based upon the size, the air space, what is left. But on a regular basis, these facility owners and operators are required to update their financial assurance and notify the region or U.S. EPA.

I would also like to say with regard to New Jersey, and I understand New Jersey has had horrendous superfund problems, and correct me if I am wrong—you certainly know better than I do—but I think New Jersey is not atypical of many States. The problems in New Jersey with the landfills were their earlier pre-subtitle D facilities that were co-disposal facilities that there were no records on.

Mr. PALLONE. Well, there is no question that the situation has changed, and a lot of them existed at a time when there was almost no environmental protection taking place. But we still have some that were strictly municipal garbage that are causing problems too, so it is not that they were all hazardous waste sites. Many of them were supposedly just municipal. But, no, I understand. I mean maybe our problems are different, but I am just using it as a word of caution for the future. Did you want to say something, Mr. Berlekamp?

Mr. BERLEKAMP. Yes. Through the Chair, Congressman Pallone. Ohio is very much the same way, and our director is here if he disagrees with this. But it is based on size, capacity. It is not a set figure. It depends on the size of the facility. You do have the 30

years. We did close a landfill under the current law in my old district for waste management, and like they said, any time within that 30 years if there is an environmental impact, it re-triggers another 30 years. So by the time you get through this process, I don't know if I will live through the time at any of these landfills. But we run into the problem we have run out of security, and that is the same guarantee as life is, I think.

I mean I have got two landfills in my current environment that the owners—it was an old strip mine county, and so they dumped trash in the strip mines, and then they walked away from it, and we don't know what is in there at this point in time, and the landowners have died. And so who is responsible at this point in time? We know what the law says, but is it real in recuperating it? That becomes the real question on down through the 30 years and the 30 years. Who is going to stand up to it? So I think every effort has been made very honestly between public and private to put much assurance on that closure as they can, but there is no guarantees in life.

Mr. PALLONE. A real concern, too, would be—I know the time is out—that you have a small county or, I guess, Mr. Woodham said, what, 22,000 people, and then a big mega landfill. And then what happens, obviously, he is confident that they are doing what they have to do, but you always worry about what the consequences are, if there is a huge cleanup operation that is necessary. But you said you were going to get back to us with whatever the financial bond is. Thank you, Mr. Chairman.

Mr. GILLMOR. There being no further questions, I want to thank the witnesses from panel three for being here. We appreciate your experience and your insight. And I also want to recognize the extra efforts that some of you have made to be here today. We very much appreciate that.

At this point, I would like to ask unanimous consent that the hearing record remain open for written questions to all of the panelists for 10 days, as well as for member statements. There being objection, so ordered, and the hearing is concluded.

[Whereupon, at 2:01 p.m., the subcommittee was adjourned.]

[Additional material submitted for the record follows:]

8-10-01
Jerry

ALLIED WASTE
Lee County Landfill, SC, LLC

August 9, 2001

Mr. Paul Gilmore, Chairman
House Energy & Commerce
Sub-Committee on Environmental & Hazardous Materials
2125 Rayburn
House Office Building
Washington, DC 20515

Dear Mr. Gilmore,

In follow up to the hearing on August 01, 2001 on solid waste issues, we have been asked to supply bond information for Lee County Landfill, SC, LLC (see enclosed). If I can be of further assistance please call me at (803) 428-2400.

Sincerely,

Joseph E. Fasulo
General Manager

P.O. Box 546 / 1431 Sumter Hwy. / Bishopville, SC 29010 / 803.428.2400 / 803.428.2404 FAX

SOUTH CAROLINA DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL
BUREAU OF LAND AND WASTE MANAGEMENT
DIVISION OF MINING AND SOLID WASTE MANAGEMENT

SAMPLE STANDBY TRUST FUND AGREEMENT
COVERING CLOSURE AND/OR POST-CLOSURE CARE
OF SOLID WASTE MANAGEMENT FACILITIES

TRUST AGREEMENT, the "Agreement," entered into as of June 6, 2001 by and between Lee County Landfill SC, LLC, a Delaware, corporation the "Grantor," and The Chase Manhattan Bank, incorporated in the State of New York, the "Trustee."

WHEREAS, the South Carolina Department of Health and Environmental Control, an agency of the state of South Carolina, has established certain requirements applicable to the Grantor, requiring that an owner or operator of a solid waste management facility shall provide assurance that funds will be available when needed for closure and/or post-closure care of the facility,

WHEREAS, the Grantor has elected to establish a standby trust into which the proceeds from a Letter of Credit or a Surety Bond may be deposited to assure all or part of such financial responsibility for the facilities identified herein,

WHEREAS, the Grantor, acting through its duly authorized officers, has selected the Trustee to be the trustee under this agreement, and the Trustee is willing to act as trustee,

NOW, THEREFORE, the Grantor and the Trustee agree as follows:

Section 1. Definitions. As used in this Agreement:

(a) The term "Grantor" means the owner or operator who enters into this Agreement and any successors or assigns of the Grantor.

(b) The term "Trustee" means the Trustee who enters into this Agreement and any successor Trustee.

(c) The term "Department" means the South Carolina Department of Health and Environmental Control.

Section 2. Identification of Facilities and Cost Estimates. This Agreement pertains to the facilities and cost estimates identified on attached Schedule A.

Section 3. Standby Trust. This Trust shall remain dormant until funded with the proceeds from the Surety Bond as listed on Schedule B. The Trustee shall have no duties or responsibilities beyond safekeeping this Document. Upon funding, this Trust shall become active and be administered pursuant to the terms of this instrument.

Section 4. Establishment of Fund. The Grantor and the Trustee hereby establish a trust fund, the "Fund," for the benefit of the Department. The Grantor and the Trustee intend that no third party have access to the Fund except as herein provided. The Fund is established initially as consisting of the property, which is acceptable to the Trustee, described in Schedule B attached hereto. Such property and any other property subsequently transferred to the Trustee is referred to as the Fund, together with all earnings and profits thereon, less any payments or distributions made by the Trustee, pursuant to this Agreement. The fund shall be held by the Trustee IN TRUST, as hereinafter provided. The Trustee shall not be responsible nor shall it undertake any responsibility for the amount or adequacy of, nor any duty to collect from the Grantor, any payments necessary to discharge any liabilities of the Grantor established by the Department.

Section 5. Payment for Closure and Post-Closure Care. The Trustee shall make payments from the Fund as the Department shall direct, in writing, to provide for the payment of the costs of closure and/or post-closure care of the facilities covered by this Agreement. The Trustee shall reimburse the Grantor or other persons as specified by the Department from the Fund for closure and post-closure expenditures in such amounts as the Department shall direct in writing. In addition, the Trustee shall refund to the Grantor such amounts as the Department specifies in writing. Upon refund, such funds shall no longer constitute part of the Fund as defined herein.

Section 6. Payments Comprising the Fund. Payments made to the Trustee for the Fund shall consist of cash or securities acceptable to the Trustee.

Section 7. Trustee Management. The Trustee shall invest and reinvest the principal and income of the Fund and keep the Fund invested as a single fund, without distinction between principal and income, in accordance with general investment policies and guidelines which the grantor may communicate in writing to the Trustee from time to time, subject, however, to the provisions of this section. In investing, reinvesting, exchanging, selling, and managing the Fund, the Trustee shall discharge his duties with respect to the trust fund solely in the interest of the beneficiary and with the care, skill, prudence, and diligence under the circumstances then prevailing which persons of prudence, acting in a like capacity and familiar with such matters, would use in the conduct of an enterprise of a like character and with like aims; except that;

(i) Securities or other obligations of the Grantor, or any other owner or operator of the facilities, or any of their affiliates as defined in the Investment Company Act of 1940, as amended, 15 U.S.C. 180a-2.(a), shall not be acquired or held, unless they are securities or other obligations of the Federal or a State government;

(ii) The Trustee is authorized to invest the Fund in time or demand deposits of the Trustee, to the extent insured by an agency of the Federal or State government; and,

(iii) The Trustee is authorized to hold cash awaiting investment or distribution uninvested for a reasonable time and without liability for the payment of interest thereon.

Section 8. Commingling and Investment. The Trustee is expressly authorized in its discretion:

(a) To transfer from time to time any or all of the assets of the Fund to any common, commingled, or collective trust fund created by the Trustee in which the Fund is eligible to participate, subject to all of the provisions thereof, to be commingled with the assets of the other trusts participating therein; and,

(b) To purchase shares in any investment company registered under the Investment Company Act of 1940, 15 U.S.C. 80a-1 et seq., including one which may be created, managed, underwritten, or to which investment advice is rendered or the shares of which are sold by the Trustee. The Trustee may vote such shares in its discretion.

Section 9. Express Powers of Trustee. Without in any way limiting the powers and discretions conferred upon the Trustee by the other provisions of this Agreement or by law, the Trustee is expressly authorized and empowered:

(a) To sell, exchange, convey, transfer, or otherwise dispose of any property held by it, by public or private sale. No person dealing with the Trustee shall be bound to see to the application of the purchase money or to inquire into the validity or expediency of any such sale or other disposition;

(b) To make, execute, acknowledge, and deliver any and all documents of transfer and conveyance and any and all other instruments that may be necessary or appropriate to carry out the powers herein granted;

(c) To register any securities held in the Fund in its own name or in the name of a nominee and to hold any security in bearer form or in book entry, or to combine certificates representing such securities with certificates of the same issue held by the Trustee in other fiduciary capacities, or to deposit or arrange for the deposit of such securities in a qualified central depository even though, when so deposited, such securities may be merged and held in bulk in the name of the nominee of such depository with other securities deposited therein by another person, or to deposit or arrange for the deposit of any securities issued by the United States Government, or any agency or instrumentality thereof, with a Federal Reserve bank, but the books and records of the Trustee shall at all times show that all such securities are part of the Fund;

(d) To deposit any cash in the Fund in interest-bearing accounts maintained or savings certificates issued by the Trustee, in its separate corporate capacity, or in any other banking institution affiliated with the Trustee, to the extent insured by an agency of the Federal or State government; and

(e) To compromise or otherwise adjust all claims in favor of or against the Fund.

Section 10. Taxes and Expenses. All taxes of any kind that may be assessed or levied against or in respect of the Fund and all brokerage commissions incurred by the Fund shall be paid from the Fund. All other expenses incurred by the Trustee in connection with the administration of this Trust, including fees for legal services rendered to the Trustee, the compensation of the Trustee to the extent not paid directly by the Grantor, and all other proper charges and disbursements of the Trustee shall be paid from the Fund.

Section 11. Annual Valuation. The Trustee shall annually, at least 30 days prior to the anniversary date of establishment of the Fund, furnish to the Grantor and to the Department's Division of Mining and Solid Waste Management a statement confirming the value of the Trust. Any securities in the Fund shall be valued at market value as of no more than 60 days prior to the anniversary date of establishment of the fund. The failure of the Grantor to object in writing to the Trustee within 90 days after the statement has been furnished to the Grantor and the Department shall constitute a conclusively binding assent by the Grantor, barring the Grantor from asserting any claim or liability against the Trustee with respect to matters disclosed in the statement.

Section 12. Advice of Counsel. The Trustee may from time to time consult with counsel, who may be counsel to the Grantor, with respect to any question arising as to the construction of this Agreement or any action to be taken hereunder. The Trustee shall be fully protected, to the extent permitted by law, in acting upon the advice of counsel.

Section 13. Trustee Compensation. The Trustee shall be entitled to reasonable compensation for its services as agreed upon in writing from time to time with the Grantor.

Section 14. Successor Trustee. The Trustee may resign or the Grantor may replace the Trustee, but such resignation or replacement shall not be effective until the Grantor has appointed a successor Trustee and this successor accepts the appointment. The successor trustee shall have the same powers and duties as those conferred upon the Trustee hereunder. Upon the successor trustee's acceptance of the appointment, the Trustee shall assign, transfer, and pay over the successor trustee the funds and properties then constituting the Fund. If for any reason the Grantor cannot or does not act in the event of the resignation of the Trustee, the Trustee may apply to a court of competent jurisdiction for the appointment of a successor trustee or for instructions. The successor trustee shall specify the date on which it assumes administration of the trust in a writing sent to the Grantor, the Department, and the present Trustee by certified mail 10 days before such change becomes effective. Any expenses incurred by the Trustee as a result of any of the acts contemplated by this Section shall be paid as provided in Section 9.

Section 15. Instructions to the Trustee. All orders, requests, and instructions by the Grantor to the Trustee shall be in writing, signed by such persons as are designated in the attached Exhibit A or such other designees as the Grantor may designate by amendment to Exhibit A. The Trustee shall be fully protected in acting without inquiry in accordance with the Grantor's orders, requests, and instructions. All orders, requests, and instructions by the Department to the Trustee shall be in writing, signed by the Department, and the Trustee shall act and shall be fully protected in acting in accordance with such orders, requests, and instructions. The Trustee shall have the right to assume, in the absence of written notice to the contrary, that no event constituting a change or a termination of the authority of any person to act on behalf of the Grantor or the Department hereunder has occurred. The Trustee shall have no duty to act in the absence of such orders, requests, and instructions from the Grantor and/or the Department, except as provided for herein.

Section 16. Amendment of Agreement. This Agreement may be amended by an instrument in writing executed by the Grantor, the Trustee, and the Department, or by the Trustee and the Department if the Grantor ceases to exist.

Section 17. Irrevocability and Termination. Subject to the right of the parties to amend this Agreement as provided in Section 16, this Trust shall be irrevocable and shall continue until terminated at the written agreement of the Grantor, the Trustee, and the Department, or by the Trustee and the Department, if the Grantor ceases to exist. Upon termination of the Trust, all remaining trust property, less final trust administration expenses, shall be delivered to the Grantor.

Section 18. Immunity and Indemnification. The Trustee shall not incur personal liability of any nature in connection with any act or omission, made in good faith, in the administration of this Trust, or in carrying out any directions by the Grantor or the Department issued in accordance with this Agreement. The Trustee shall be indemnified and saved harmless by the Grantor or from the Trust Fund, or both, from and against any personal liability to which the Trustee may be subjected by reason of any act or conduct in its official capacity, including all expenses reasonably incurred in its defense in the event the Grantor fails to provide such defense.

Section 19. Choice of Law. This Agreement shall be administered, construed, and enforced according to the laws of the State of South Carolina.

Section 20. Interpretation. As used in this Agreement, words in the singular include the plural and words in the plural include the singular. The descriptive headings for each Section of this Agreement shall not affect the interpretation or the legal efficiency of this Agreement.

IN WITNESS WHEREOF the parties have caused this Agreement to be executed by their respective officers duly authorized and their corporate seals to be hereunto affixed and attested as of the date first above written.

[Signature of the Grantor]

Kenny L. Apker, Asst. Secretary
[Name and Title]

(480) 627-2739
[Telephone Number]

[Signature of Witness or Notary]

[Seal]

SUZANNE S. BOK
Notary Public - Arizona
MARICOPA COUNTY
My Commission Expires
MARCH 31, 2004

(Rev. 1/01)

[Signature of Trustee]

MAY NG
VICE PRESIDENT
& TRUST OFFICER
[Name and Title]

(713) 216-6467
[Telephone Number]

[Signature of Witness or Notary]

[Seal]

STEPHANIE A. McLAUGHLIN
NOTARY PUBLIC
STATE OF TEXAS
My Comm. Exp. 12-14-2004

SCHEDULE "A"

Schedule "A" must list each facility's:

-Permit Number	312411-1101
-Name	Lee County Landfill SC, LLC
-Address	1301 Sumter Highway Bishopville, SC 29010
-Current Closure Cost Estimate	$6,043,878.00
-Current Post-Closure Cost Estimate	$6,940,603.00

SCHEDULE "B"

Sureties Name:	**National Fire Insurance Company of Hartford**
Surety's Bond #:	**929161645**
Total Bond Amount:	**$12,984,481.00**

(Rev. 1/01)

TRUST FUND EXHIBIT "A"

All orders, requests and instructions by Grantor to the Trustee shall be in writing and signed by one of the following persons.

Tom P. Martin
Treasurer

Jenny L. Apker
Assistant Treasurer

James E. Gray
Vice President
Controller

(Rev. 1/01)

SOUTH CAROLINA DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL
BUREAU OF LAND AND WASTE MANAGEMENT
DIVISION OF MINING AND SOLID WASTE MANAGEMENT

REVISED PERFORMANCE BOND
COVERING CLOSURE AND/OR POST-CLOSURE CARE
OF SOLID WASTE MANAGEMENT FACILITIES

COPY

Date revised bond executed:	April 23, 2000
Effective date:	September 1, 2000
Principal:	Lee County Landfill, SC, LLC 1301 Sumter Highway Bishopville, SC 29010
Type of organization:	Corporation
State of incorporation:	Delaware

Name, address and closure and post-closure amount(s) for each facility guaranteed by this bond (indicate each separately):

Lee County Landfill – Permit #312411-110
1301 Sumter Highway
Bishopville, SC 29010
Closure Amount $6,043,878.00
Post-Closure Amount $6,940,603.00

Total penal sum of bond:	$12,984,481.00
Sureties name and business address:	National Fire Insurance Company of Hartford 3500 Lacey Rd., Suite 1050 Downers Grove, IL 60515
Surety's Bond Number:	929161645

Know all Persons by These Presents, that we, the Principal and Surety(ies) hereto are firmly bound to the South Carolina Department of Health and Environmental Control hereinafter called the "Department" in the above penal sum for the payment of which we bind ourselves, our heirs, executors, administrators, successors, and assigns jointly and severally; provided that where the Surety(ies) are corporations acting as co-sureties, we, the Surety(ies), bind ourselves in such sum "jointly and severally" only for the purpose of allowing a joint action or actions against any or all of us, and for all other purposes each Surety binds itself, jointly and severally with the Principal, for the payment of such sum only as is set forth opposite the name of such Surety, but if no limit of liability is indicated, the limit of liability shall be the full amount of the penal sum.

Whereas said Principal is required, under the South Carolina Solid Waste Management Regulations to have a permit in order to own or operate each solid waste management facility identified above, and

Whereas said Principal is required to provide financial assurance for closure, or closure and post-closure care, as a condition of the permit, and

Whereas said Principal shall establish a standby trust fund as is required when a surety bond is used to provide such financial assurance;

Now, therefore, the conditions of this obligation are such that if the Principal shall faithfully perform closure, whenever required to do so, of each facility for which this bond guarantees closure, in accordance with the closure plan and other requirements of the permit as such plan and permit may be amended, pursuant to all applicable laws, statutes, rules, and regulations, as such laws, statues, rules, and regulations may be amended,

And, if the Principal shall faithfully perform post-closure care of each facility for which this bond guarantees post closure care, in accordance with the post-closure plan and other requirements of the permit, as such plan and permit may be amended pursuant to all applicable laws, statutes, rules, and regulations, as such laws, statutes, rules and regulations may be amended.

Or, if the Principal shall provide alternate financial assurance as approved by the Department in writing, within 90 days after the date notice of cancellation is received by both the Principal and the Department from the Surety(ies), then this obligation shall be null and void, otherwise it is to remain in full force and effect.

The Surety(ies) shall become liable on this bond obligation only when the Principal has failed to fulfill the conditions described above.

Upon notification by the Department that the Principal has been found in violation of the closure requirements of the applicable regulation, for a facility for which this bond guarantees performance of closure, the Surety(ies) shall either perform closure in accordance with the closure plan and other permit requirements or place the closure amount guaranteed for the facility into the standby trust fund as directed by the Department.

Upon notification by the Department that the Principal has been found in violation of the post-closure requirements of the applicable regulation, for a facility for which this bond guarantees performance of post-closure care, the Surety(ies) shall either perform post-closure care in accordance with the post-closure plan other permit requirements or place the post-closure amount guaranteed for the facility into the standby trust fund as directed by the Department.

Upon notification of the Department that the Principal has failed to provide alternate financial assurance as approved in writing by the Department, during the 90 days following receipt by both the Principal and the Department of a notice of cancellation of the bond, the Surety(ies) shall place funds in the amount guaranteed for the facility(ies) into the standby trust fund as directed by the Department.

The Surety(ies) hereby waive(s) notification of amendments to closure plans, permits, applicable laws, statutes, rules and regulations and agrees that no such amendment shall in any way alleviate its (their) obligation to this bond.

The liability of the Surety(ies) shall not be discharged by any payment or succession of payments hereunder, unless and until such payment or payments shall amount in the aggregate to the penal sum of the bond, but in no event shall the obligation of the Surety(ies) hereunder exceed the amount of said penal sum.

The Surety(ies) may cancel the bond by sending notice of cancellation by certified mail to the owner or operator and to the Department provided, however, that cancellation shall not occur during the 120 days beginning on the date or receipt of the notice of cancellation by both the Principal and the Department, as evidenced by the return receipts.

The Principal may terminate this bond by sending written notice to the Surety(ies), provided, however, that no such notice shall become effective until the Surety(ies) receive(s) written authorization for termination of the bond by the Department.

In witness whereof, the Principal and Surety(ies) have executed this Performance Bond have affixed their seals on the date set forth above.

The persons whose signatures appear below hereby certify that they are authorized to execute this surety bond on behalf of the Principal and Surety(ies).

Principal

Lee County Landfill, SC, LLC

Theresa Snow, Power of Attorney

Corporate Surety(ies)

National Fire Insurance Company of Hartford
3500 Lacey Rd., Suite 1050
Downers Grove, IL 60515

State of Incorporation: Connecticut

Liability Limit: $12,984,481.00

Patricia J. Kenis, Attorney-in-Fact

Bond Premium: $129,845.00



8-16-01
Jim O'Connor
President &
Chief Executive Officer

August 14, 2001

The Honorable Paul E. Gillmor
Chairman
House Energy and Commerce Subcommittee
on the Environment and Hazardous Materials
U.S. House of Representatives
2125 Rayburn House Office Building
Washington, D.C. 20515-6115

Re: Perspectives on Interstate and International Movements of Sold Waste

Dear Chairman Gillmor:

Legislation considered at your Subcommittee's August 1 hearing would have a substantial effect on Republic Services. For that reason, I am taking this opportunity to share some of our perspectives on interstate and international movements of solid waste. Because of the importance of these matters to the Company, I would ask that the Subcommittee include this letter in the printed record of the hearing.

Founded in 1995, Republic Services is the nation's third largest provider of waste collection and disposal services. Republic Services provides waste collection services in twenty-two states and owns or operates seventy-five transfer stations and fifty-seven landfills.

Republic Services remains committed to the safe and cost-effective management of society's waste. We will be better able to live up to that commitment if Congress keeps state and national borders open to waste movements. We are in awe of the framers of the Constitution's wisdom in providing for unfettered trade among the states and have not seen a persuasive case for departing from that regime in the case of solid waste. We understand, however, that the interstate and international waste movements occur under a cloud of emotional and political opposition. We submit these remarks in an effort to help disperse that cloud.

Our perspective necessarily starts – as should the members of your Subcommittee – with an acknowledgement of the framers' wisdom in including the Commerce Clause in our Constitution. Congress's historic reluctance to confer authority upon the states to interfere with the free flow of goods and services across state borders has served the nation well. (We expounded on the framers' wisdom in a statement included in the record of a Senate committee

110 SE 6th Street, Suite 2800 • Fort Lauderdale, Florida 33301 • (954) 769-3623 • Fax (954) 769-3632

hearing, and rather than repeat those remarks here, would simply direct the Subcommittee to the record for that hearing. *Interstate Transportation of Municipal Solid Waste, Hearing on S. 533, S. 663, and S. 872 Before the Senate Committee on Environment and Public Works*, 106th Cong., 1st Sess. 86 (1999).) We believe the burden falls on those who would choose to exclude solid waste from the Commerce Clause to prove the advantages of their approach. So far we have not seen such proof.

There are several reasons to be skeptical of legislation that would exclude solid waste from the Commerce Clause's protection. Such legislation would certainly mean bad news for consumers: less competition among waste disposal service providers, higher disposal costs, and less local autonomy.

- Restrictions on waste movements across political boundaries would harm consumers by eliminating the opportunities to create regional landfills that take advantage of economies of scale and efficiencies of consolidation. Landfill size is a key factor in determining the cost per ton of waste disposal, as recognized by U.S. EPA nearly a decade ago. Construction and maintenance costs for state-of-the-art disposal facilities are substantial. By spreading the costs among a number of communities, landfill operators are able to achieve economies of scale, and lower the cost-per-ton of waste disposal. Regional landfills also promote efficiency by allowing communities in the same general proximity to avoid the expense of siting separate fills.

- Restrictions on the interstate transport of waste would also harm some consumers by denying them access to the most cost-effective disposal options. Some states enjoy a comparative advantage in the provision of waste disposal services. For example, the cost of land is generally cheaper in the Midwest than in the Northeast. As a result, the capital investment required to build a landfill in the Midwest is generally lower than the investment required to build a similar facility in the Northeast. Furthermore, siting landfills in geographic areas that are naturally less amenable to achieving groundwater protection goals may require spending significantly more to achieve compliance with environmental protection standards.

- In this same vein, the movement of solid waste across state and national borders actually fosters proper waste management. Interstate and international shipments of solid waste have made possible the volume of business necessary to construct and maintain state-of-the-art, regional landfills.

While we can readily identify the foregoing advantages that arise from allowing solid waste to move across borders, we do not foresee comparable advantages from closing political boundaries. Proponents of border closing have not carried their burden. As we noted in our 1999 Senate statement, even the Natural Resources Defense Council recognized several years ago that closing political boundaries in itself provides no environmental benefits and, in fact, could be counterproductive.

6

- The reason no benefits arise from border closings is understandable. Waste management in compliant landfills is already protective of human health and the environment. Federal law sets high national standards for the degree to which operating landfills must protect human health and the environment.

- We have seen border-closing proponents claim that allowing cross-border waste movements discourages recycling efforts, but cause-and-effect have never been demonstrated. In our 1999 Senate statement, we noted the irony of New Jersey's highest recycling rate in the country while it was simultaneously the second largest exporter of solid waste. Obstacles to increasing recycling rates nationwide arise from many factors other than open political boundaries.

- Allowing states to close their borders to waste from other states would be at cross-purposes with other environmental objectives—such as preserving open space. If waste from the originating state cannot be sent to a regional landfill located in another state, then currently open space will be placed at risk for local landfill siting.

Again, we trust you and the Subcommittee will accept these remarks in the spirit in which they are intended – to disperse the emotional and political cloud that hangs over an important public policy issue. We thank you for your attention to this letter and trust it will be helpful to the Subcommittee as it continues its deliberations.

Respectfully submitted,

James E. O'Connor
President and Chief Executive Officer

cc: Jerry Couri, Policy Coordinator (via facsimile, (202) 225-1919)
Hollyn Kidd (via express mail on disk)

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

1021 NORTH GRAND AVENUE EAST, P.O. BOX 19276, SPRINGFIELD, ILLINOIS 62794-9276

THOMAS V. SKINNER, DIRECTOR

July 31, 2001

The Honorable Paul E. Gillmor, Chairman
Subcommittee on Environment and Hazardous Materials
Committee on Energy and Commerce
2125 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Gillmor:

I appreciate the invitation to testify before the Subcommittee on the subject matter of H.R. 1213, H.R. 667 and H.R. 1927 on restricting municipal solid waste movement and disposal.

Unfortunately, I am unable to deliver the testimony personally.

I would appreciate my written testimony being entered into the record.

Once again, thank you for the opportunity to provide comments on the legislation before the Subcommittee.

Sincerely,

Thomas V. Skinner

Thomas V. Skinner
Director

TESTIMONY

THOMAS V. SKINNER, DIRECTOR

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

FOR THE HEARING OF THE SUBCOMMITTEE
ON ENVIRONMENT AND HAZARDOUS MATERIALS

OF THE COMMITTEE ON ENERGY AND COMMERCE

UNITED STATES HOUSE OF REPRESENTATIVES

AUGUST 1, 2001

Chairman Gillmor and members of the Subcommittee:

As Director of the Illinois Environmental Protection Agency ("Illinois EPA") I appreciate the opportunity to offer my thoughts on bills currently pending before the Subcommittee on Environment and Hazardous Materials which provide new authority to states to restrict or eliminate municipal solid waste coming for disposal from other states or countries (specifically H.R. 1213, H.R. 667 and H.R. 1927). The Illinois EPA does not believe that these bills should be passed in their current form.

Although there are several pending bills, I would like to direct my comments primarily at H.R. 1213. Bills such as H.R. 1213 raise a number of serious concerns because they rely upon the idea of restricting municipal solid waste movement and disposal using state-boundary geography:

- **State boundaries do not define socio-economic areas.** Many state lines - including several of Illinois' - are indistinguishable without a road sign; people cross them regularly to work, shop, and for recreation. These arbitrary boundaries do not make good determinants for limiting access to nearby service for waste disposal, just as it would make no sense to restrict people from Gary, Indiana coming to Chicago's Wrigley Field to watch a ball game. Even state lines with a topographic boundary - like Illinois' boundary with Missouri, the Mississippi River - do not necessarily define socio-economic areas.

- **States are not good descriptors for municipal solid waste import/export comparisons.** Most states are relatively large geographic areas and many have non-homogeneous population distributions. Using Illinois as the example, a significant portion of our population - approaching two-thirds - is located in the northeastern part of our state. It comes as no surprise that many things, including waste, travel regularly back and forth between northeast Illinois and the contiguous states much more than they travel from northeast Illinois to southern Illinois. The distances are just so much greater from one end of a state to another.

- **States with environmental concerns about municipal solid waste disposal**

already have sufficient authority to address them. Unregulated waste disposal can lead to severe negative environmental consequences. That is why Congress directed the Environmental Protection Agency ("USEPA") to develop nation-wide municipal solid waste landfill design standards in Subtitle D of the Resource Conservation and Recovery Act. USEPA adopted those landfill standards over a decade ago and all landfills in the United States should be operating within those standards today. My Agency has been authorized by USEPA to operate the permit program for these landfills, as have many other states. This authority allows states to go beyond the national standard. As an example, Illinois has restricted certain waste-elements from our landfills. One of these waste-elements is landscape waste: leaves and grass clippings. We apply that standard regardless of where the waste comes from. Thus, wastes from communities in other states that have grass clippings in them must be returned to the sender, as is such waste generated within Illinois. States have broad authorities to restrict materials from landfills that they believe would cause harm or take up too much space. Generators in other states are obligated to follow those same rules if they wish to use those landfills.

- **Rarely, if ever, do states make decisions regarding interstate waste movement.** In most states, and certainly here in Illinois, the decisions about where to pick up waste and where to dispose of it, as well as the cost for that service, are made either by local government or by private industry. As a state we have controlled, permitted and regulated waste management facilities, but do not play a role in the choices of disposal options. This is completely appropriate since we are not paying the bill for that service. The decisions are primarily economic ones: most private waste management service providers are motivated to reduce their costs and use nearby disposal options. Sometimes the closest option is in an adjacent state. Thus, it is generally a fallacy to claim that "State A" has sent waste to "State B". I don't believe that states are really sending waste anywhere. States are rarely a party to a contract for significant amounts of municipal solid waste disposal services.

- **Using state boundaries to restrict waste movement can lead to significant environmental, energy-use and fiscal implications.** If major sources of municipal solid waste generation were restricted from using nearby disposal sites in adjacent states, then in-state disposal at farther-removed sites would have to be used. The impact on traffic, road wear, air emissions, noise and fuel use would all be negative. Waste generators should pay to address the negative impacts of waste delivery to a disposal site, but only at the same rate as the in-state generators who pose the same impacts. It seems that "forcing" many additional truck-miles of traffic at a time of heightened energy-conservation focus is working against that goal. The added, unnecessary cost of this extra transportation would have to eventually be borne by the waste generators, in

many cases towns or cities. Many of these municipalities would be forced to increase local property taxes to deal with the increased cost.

- **Long-distance rail or truck hauling from state-to-state is significantly different than short distance waste movement that crosses a state line.** Restricting waste that travels a very long way for management (several hundreds of miles or so) may be appropriate. Without some restrictions or financial disincentives, some socio-economic areas may not show the responsibility of addressing their waste management needs. This can lead to very long distance waste movement, sometimes across several states. Illinois has been on the receiving end of a "trash train" loaded with unprotected municipal solid waste from a state several hundred miles away. Before, during and after the trip, which obviously took much longer than waste delivered from nearby communities, the waste had begun to leak fluids, rot, harbor flies and maggots, and give off a very unpleasant odor. Needless to say, this situation was unacceptable to my Agency and the waste was not disposed of in Illinois in that condition.

I have offered these comments from perhaps a unique state perspective. Illinois is both a state where some communities find it financially and environmentally appropriate to direct their wastes to nearby landfills in adjacent states, as well as a state with landfills that are the destination for significant amounts of waste delivered from communities outside Illinois. To be specific, some of the Chicago area's waste goes to landfills in Indiana and Wisconsin, and much of St. Louis' waste is disposed in landfills on our side of the river. We do not believe that the environment or the economy would be well served by stopping -- either directly or with indirect financial penalties -- either of those waste-flow decisions.

Waste does not leave Illinois because we want for disposal capacity. We carefully measure the amount of landfill space we have in our state every year. We have more landfill space under permit now than we have ever before measured. Waste leaves Illinois simply because it goes to landfills which are closer by in a neighboring state.

Thank you for the opportunity to express my concerns with the interstate waste transportation issue. I realize that waste disposal from anywhere, and particularly from another state, can generate strong emotions, but I urge you to refrain from passing any of these bills in their current form.